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SUCCESS IN MEDIATION

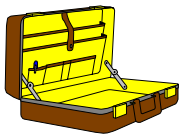
Although mediation has become a familiar tool to most of us, we are often left wondering why and how mediation works where unaided negotiations fail. This article is an attempt to clarify the mystery surrounding the mediation process and provide information on fundamental mediation strategy.

Mediation is defined as a "forum in which an impartial person, the mediator, facilitates communication between disputing parties to promote reconciliation, settlement, or understanding among them." Mediation "turbo charges" negotiations by bringing more benefits in less time. Proponents of mediation often praise the benefits of mediation by quoting statistical studies that claim if we submitted every case not resolved by negotiation to mediation, approximately 80% of those cases would be settled. Although not complete, the following list outlines reasons for the success of mediation:

(1) Mediation improves the emotional climate and inhabits further deterioration of negotiations by setting cooperative tone and creating a positive atmosphere.
(2) Mediation reduces the need for cat and mouse discovery games by focusing on the real issues in a confidential setting.
(3) Mediation creates a neutral emotional zone by having a mediator/facilitator meeting in separate caucuses with parties.
(4) Mediation provides structure for open dialogue and prevents outburst by the use of a mediator/facilitator.

(Continued on Page 2-3)

BRIEFCASE NOTES- NEW CASE LAW



John J. Petta v. ABC Insurance Company, 03-0610. In the Supreme Court of State of Wisconsin.

EFFORTS TO EXPAND DANGEROUS MADE WHOLE DOCTRINE

On September 21, 2004, Gary Wickert argued in the Wisconsin Supreme Court on behalf of Travco Insurance Company, in a case which could have devastating effects on subrogation in Wisconsin, and throughout the country. Dayle Petta, a mother of two,

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(Success in Mediation - Continued from Page 1)

(5) Mediation challenges the parties under an umbrella of neutrality to ask “what if” or “have you thought about” kinds of questions.
(6) Mediation restores communication through caucusing and confidentiality.
(7) Mediation acts as an agent of reality by moving parties off demands that are often excessive and offers that are frequently low.

As Voltaire pointed out, sometimes the difference between winning and losing is subtle. Mediation is often successful because it is a process where an agreement can be struck that need not cast those involved as either winners or losers. However, mediation is **only** the management of the bargaining between parties. In its purest form, mediation empowers the parties to make their own decisions. These decisions involve elements of psychology, finance, risk analysis, and law, especially if the case is in litigation or if litigation may occur in the future. Mediation is only a tool to aid you in making decisions and resolving your case. Be careful not to fall into the trap of thinking that mediation allows you to be a passive participant. You must remain in control of your case. Never, never, never, let the mediator make a decision or negotiate for you. If necessary, seek counsel with regard to your negotiations strategy. Remember, mediation is condensing weeks or months of negotiations into a single day, usually in the following five step process:

(1) The introduction of the parties, the mediator, and the mediation process;
(2) Introductory statements by parties outlining their positions and answering questions from the mediator designed to discover the basic nature of the case;
(3) Private sessions between the mediator and each party to discuss their prospective positions in the case and to gain additional insight;
(4) The mediator shuttling between parties to explore settlement options and convey information relevant to resolving the dispute; and
(5) Agreement drafting between the parties.

Whether a case is referred to mediation during the litigation process or mediation is initiated at the claims stage, this five step process will be invoked. The object of the five step process is to resolve the dispute and reach a settlement. As in any settlement negotiations, this will require your presenting your “best case” to convince the opposing party of the strengths of your case, both factually and procedurally. For example, during step 2 of the process you or your attorney will need to make an opening statement with regard to the facts supporting your position. Most often your statement should include facts that are already known to all respective parties. You are not required nor should you disclose every aspect of your case. If you need assistance discerning which facts should be disclosed on your case, you may wish to discuss this with your attorney. If you have already retained the assistance of an attorney on your case, you will still be called upon to make decisions with regard to the settlement of your case. To help you in the decision process, consider the following:

“What is the likely outcome of this case at trial?” Ask your attorney to help assess the probability of this outcome. The relevant question is, “How many times out of ten will you prevail at trial?”
“What are the expected fees and court costs and the value of a lost opportunity time?” Again your attorney is a good source for this information.
“How long will it be until the final disposition of this case?”
“What is the probability of appeal, the cost of appeal, and likely outcome on appealing?”
“Are there any unresolved motions before the court that would be dispositive of this case? If so, how does this impact on you desire or willingness to settle?”
“What is the relationship between the parties?” For example, if this is a subrogation claim, ask yourself or your attorney whether th§e plaintiffs have or will stipulate to your lien, will you need to be active at trial? Will you be working

with or against the plaintiff's attorney? "What proposals of settlement do you think the opposing side will make?" "What proposals of settlement are you willing to make?" Think about all your interest in the case, i.e., recovery of benefits paid out and your statutory credit.

While you should always come with an open mind to mediation, because new perspectives and sometimes new information is revealed, you should still have a notion of how you or your attorney will negotiate and your expected outcome. You may wish to plan a negotiation strategy with your attorney prior to mediation. For example, you may have a worker's compensation subrogation interest which is relatively small at the time of mediation but have significant reserves on the case. Therefore, the credit will be a major negotiation point when resolving the claim. When bringing a subrogation interest to the table, always be prepared to be cast as the fly in the ointment and the sticking point in the negotiations. Be prepared for some direct, head-on assaults by the mediator.

Finally, remember that whatever the settlement is in a specific case, it is only as good as the mediation agreement outlines. In the example above, it would be advisable to retain subrogation counsel to protect your interest due to the fact that many mediation agreements contain general, overly broad language with blanks for dollar amounts but no language specifically establishing your credit. Leaving out the appropriate language opens the door for subsequent attack on the settlement reached at mediation. Be sure to clarify in the agreement what happens while the settlement is being funded. If additional benefits are paid the lien will increase. Should you like additional information to be included in your mediation agreement, or other strategies to use at mediation, contact Matthiesen, Wickert & Lehrer.

NEW ERISA BOOK FINALLY FINISHED!!!!

After two years in the making, our new book entitled "ERISA and Health Insurance Subrogation in All 50 States" is finally finished. It is available through Juris Publishing at http://www.jurispub.com. This new book is the most complete and thorough treatise covering the complex subject of ERISA and health insurance subrogation ever published. Unlike most areas of insurance litigation/subrogation, health insurance subrogation requires the subrogation professional to be familiar not only with applicable state law and the many vagaries and nuances of health insurance subrogation within each state, but also the treatment of health insurance subrogation through ERISA, as applied by Federal District Courts, Federal Appellate Courts, and the United States Supreme Court. Familiarity with the general trends within each of the 12 Federal Circuits is also cited. This book is intended to introduce the health claims handler, in-house counsel and subrogation professional to the complex and challenging world of health insurance subrogation marketplace. Please our website at www.mwl-law.com or Juris Publishing website for a detailed summary of the book and a look at its table of contents. Call Jamie Breen at (800) 637-9176 if you have any questions.

(Continued from Briefcase Notes on Page 1)

adult and emancipated children, was killed in an auto accident, and brought a wrongful death action against the tortfeasor. Travco insured Dayle Petta, deceased, and paid $17,000 in medical and funeral expenses, as well as property damage to the vehicle she was driving at the time of her death. The two adult children settled their wrongful death case for $260,000, the limits of the third party tortfeasor, even

though their damages exceeded the statutory limits of $350,000. The adult son and daughter plaintiffs indemnified the defendant for the subrogation interest of Travco, claimed they weren't made whole, and brought a motion for a *Rimes* hearing, and the trial court declared that they were not made whole, and that Travco should be barred from asserting their subrogation rights. Travco appealed.

The Court of Appeals reversed, and issued an opinion in *Petta v. ABC Ins. Co*., 672 N.W.2d 146 (Wis.App.2003). It correctly held that the adult children had brought the claims for the medical, funeral and property damages, on behalf of Travco Insurance Company, under the Wrongful Death Statute in Wisconsin, and that the made whole doctrine did not apply, because the plaintiffs were not Travco's insured - Dayle Petta and her estate were. They noted that it would be a dangerous precedent to expand the made whole doctrine beyond the insured/insurer relationship, and such action could lead to multiple plaintiffs racing to settle with and then indemnify a defendant, thereafter claiming the other plaintiffs were barred from recovery because the first plaintiffs were not made whole. The plaintiffs appealed to the Wisconsin Supreme Court, which granted the appeal and set the case for oral arguments on September 21, 2004.

The arguments went well, and the court seemed to acknowledge the need for a distinction between cases like this - where the insured/insurer relationship was not present - and cases where it was present. However, the court's questions seemed to focus on whether it was "fair" for the adult children to only take a portion of their damages, while Travco recovered its subrogation interest in full. Gary Wickert countered by arguing that "equity" should have no place outside of the insured/insurer relationship, and that the made whole doctrine was "not a doctrine of sympathy - it was a doctrine of equity".

If the Supreme Court expands the made whole doctrine and equity into subrogation situations outside of the traditional insurer/insured relationship, we may well see a whole species of attacks on subrogation rights. Wisconsin is known as the "mother of all made-whole states", and its *Garrity* and *Rimes* cases are cited by and used as a basis for the application of the made whole doctrine in dozens of other states. This creative but inappropriate effort to destroy Travco's subrogation interests should be of interest to carriers everywhere. Subrogation seems to always be the convenient whipping boy, and the easiest entity to make suffer a loss whenever things aren't "fair" in civil litigation. However, our job, in addition to protecting these precious subrogation rights as a foundation to keeping insurance premiums and costs low for the employing public and insureds everywhere, is to educate and spread the truth about the value subrogation lays at the feet of a society which has seen its insurance rates increase exponentially over the last ten years. The decision in this case is expected sometime soon, and should be a significant event in the evolution of subrogation everywhere. Oral arguments may be heard at: http://www.wicourts.gov/supreme/scoa.jsp?docket_number=&begin_date=&end_date=&party_name=petta&sortBy=date.

SUBROGATING ON THE WATERFRONT
Longshore and Harbor Worker's Compensation Subrogation

Part Two of Two

Due to the length of this article, we brought this article to you in two parts. Part one can be found in our Spring 2004 newsletter, which can be viewed on our website at www.mwl-law.com.

Allocation of Third Party Recovery

If the statutory assignment to the carrier occurs because the employee does not file suit, the carrier is free to file suit and prosecute the case to judgment or to compromise the claim. 33 U.S.C. §933(d) (2003). In such a situation, the carrier is entitled to retain from the recovery:

(1) its expenses and attorneys' fees;
(2) the medical and comp benefits that the

employer has already paid to the worker; and

(3) the present value of all amounts thereafter payable as compensation and the present value of the costs of all medical benefits thereafter to be furnished.

The employer retains the present value of future compensation benefits "as a trust fund to pay such compensation and the cost of such benefits as they become due". 33 U.S.C. §933(e)(1)(D) (2003). The carrier must then pay whatever is left, if anything, to the worker. *Id.* However, if the worker prosecutes the third party claim and obtains a judgment, the LHWCA provides that the carrier's liability for compensation under the Act shall be reduced by the worker's net recovery. This means the actual amount recovered less the expenses reasonably incurred in respect to such proceedings, including reasonable attorneys' fees. Peters v. North River Ins. Co., *supra*. Although an employer to whom a worker's claim has been assigned has exclusive control over the settlement decisions, the LHWCA does not give this same degree of control where it is the worker asserting the third party action. 33 U.S.C. §933(d) (2003). The LHWCA makes no provision for a situation in which the worker desires to settle the third party case for *more* than the total compensation owed by the employer, and case law has established that he is free to do so, after which the employer's liability for any unpaid benefits will be extinguished. Peters, *supra*. If, on the other hand, the worker desires to settle the claim for *less* than the total compensation owed by the employer, the worker must obtain the written approval of both the employer and its insurance carrier. 33 U.S.C. §933(g)(1) (2003). If approval is obtained, the net amount of the settlement reduces the carrier's liability to the same extent that a judgment would. If approval is not obtained, all rights to comp and medical benefits under the LHWCA are terminated, regardless of whether the employer or the employer's carrier has made payments or acknowledged entitlement to benefits under the LHWCA. 33 U.S.C. §933(g)(2) (2003).

Clearly, these provisions only benefit the carrier if it hasn't fully discharged its compensation obligation. While the LHWCA does not expressly provide for reimbursement to the carrier from a judgment or settlement obtained by the worker, courts have uniformly held that the carrier has a subrogation right to be reimbursed from the worker's net recovery for the full amount of comp benefits it has paid. Allen v. Texaco, Inc., 510 F.2d 977 (5th Cir. 1975); Peters v. North River Ins. Co., 764 F.2d 306 (5th Cir. 1985). The carrier's lien on these third party recoveries is intended to remain inviolable, and does not depend on any proof that the third party breached a duty to the employer. Therefore, a combination of the expressed provisions of the Act and the cases construing it establish that, when the worker recovers from a third party by judgment or compromise, at least where the settlement agreement does not specifically mention the compensation lien, the funds are distributed as follows:

(1) The worker retains his litigation expenses and a reasonable attorney's fee;
(2) The carrier receives from the recovery a credit for any compensation liability not yet satisfied and reimbursement for compensation already paid; and
(3) The worker retains whatever is left, if anything. Ochoa v. Employers Nat'l Ins. Co., 724 F.2d 1171 (5th Cir.), *vacated*, 105 S.Ct. 583 (1984), *adhered to on remand*, 754 F.2d 1196 (1985).

The subrogation rights of the carrier extend to any amount recovered from the third party by the worker, and are not simply limited to amounts awarded for comp and medical benefits. Haynes v. Rederi A/S Aladdin, 362 F.2d 345 (5th Cir. 1966). Therefore, the carrier would be subrogated to any amounts awarded for pain and suffering, or punitive damages. Haynes, *supra*; Jacques v. Calmar Industries, AB, 8 F.3d 272 (5th Cir. 1993). In Jacques, which was argued by Gary Wickert on behalf of the subrogated carrier, Alabama law applied. Alabama law set forth that the only damages recoverable in a death action were punitive damages. The plaintiffs argued that the carrier,

Hartford Insurance Company, was not entitled to recover because there were no compensatory damages recovered. The circuit court held that the carrier was subrogated to the recovery of punitive damages.

Customarily, a LHWCA carrier files an intervention into an existing third party action once it has paid benefits. The purpose of the intervention is to assert its "LHWCA lien". As may be pointed out to you from time to time by plaintiffs attorneys, the LHWCA does not specifically reference such a lien or the carriers right to intervene. They are correct in that there is no statutory basis for the LHWCA lien. As one federal court puts it, "the Act does not expressly provide for the distribution of the amounts recovered in the suit brought by the longshoreman." Bloomer v. Liberty Mutual Ins. Co., 445 U.S. 74 (1980).

The lack of statutory authority for LHWCA lien and a carrier's intervention does not mean that they don't exist. As one supreme court noted in a recent decision, "the courts have long imposed equitable liens in favor of employers on recoveries their injured employees might reap from third party tortfeasors . . . the creation of the equitable lien naturally engendered a concomitant right to intervene in the litigation between the employee and the third party tort feasor." Lewis v. United States, 812 F. Supp. 629 (E.D. Va. 1993). The lien/intervention mechanism is so ingrained into our common law that even Congress doesn't consider it necessary to amend the LHWCA to provide a statutory basis for the process. 105 Cong. Rec. 12, 674 (1959) (Comments of Sen. Bartlett to the Committee on Labor and Public Welfare).

Attorneys' Fees/Costs

For a long time, the tail wagged the dog. The United States Supreme Court had held that the carrier was entitled to recover its entire lien without paying for any portion of the injured workers' attorneys' fees and costs. Bloomer, *supra*. In 1984, Congress amended the LHWCA and provided that the injured worker which pursues litigation was entitled to costs, as well as reasonable attorneys' fees. 33 U.S.C. §933(e)(f) (2003). However, the carrier has the right to a total satisfaction of its "LHWCA lien" from the amount remaining after deduction of costs and attorneys' fees. Edward A. White. *Longshore Liens in Third Party Litigation - Plaintiff's Aspect*, 6 U.S.F. Mar. L.J. 117 (1993).

Statutory Credit

Instead of a traditional credit, the LHWCA gives the carrier something even better. Although it frequently operates as a credit, it also actually gives the carrier the right to recover the present value of all future benefits which it may be obligated to pay in the future. 33 U.S.C. § 933(e)(1)(D) (2003). The present value of the future benefits is to be computed in accordance with a schedule prepared by the Secretary of Labor, and the present value of the cost of all benefits thereafter is to be estimated by the Deputy Commissioner, in the amounts so computed and estimated are kept by the employer as a trust fund to pay such compensation and the cost of such benefits as they become due. *Id.*

The LHWCA requires the employer to pay as compensation a sum equal to the excess of the amount of benefits payable over the net amount recovered in the third party action. 33 U.S.C. § 933(f) (1988). This is a simple matter if the compensation involves only medical benefits and the employee is the only person entitled to compensation. However, if benefits for a spouse or children are involved, issues such as apportionment of benefits or gerrymandering of settlements come into play. Where a settlement involves family members, it is important to make sure that the apportionment of benefits are specified in the settlement agreement. The burden is on the employer to prove the amount to be offset. Force v. Director, OWCP, Dept. of Labor, 938 F.2d 981 (9th Cir. 1991). If the apportionment of a settlement in a third party action does not appear to be an accurate allocation of the benefits to the various family members based on the prevailing judgments or settlements of such claims, the Administrative Law Judge and/or the Board may set aside the apportionment and require a different allocation.

Brisco v. American Cyanamid Corp., 22 Ben. Rev. Bd. Serv. (MB) 389 (1989).

Related Issues

Unlike many state workers' comp subrogation scenarios, the injured worker and the third party defendant can settle the third party case independent of the carrier's participation, and may even actually agree, among themselves, who is responsible for repayment of the lien. Speaks v. Trikora Lloyd P.T., 838 F.2d 1436 (5th Cir.1988). In situations where defense counsel agrees with plaintiff's counsel that the defendant would "take care of" the lien, the entire lien is owed by the defendant to the carrier, in addition to the settlement. Speaks, *supra.* This is because the carrier's right is vested and automatic, and the carrier cannot be required to try the case to see how much of its lien it can "prove up". Peters v. North River Ins. Co., 764 F.2d 306 (5th Cir. 1985). This is, of course, where the carrier does not approve in writing of the settlement under the LHWCA. 33 U.S.C. §933(g)(1) (2003). Section 933(g)(2) provides that a worker who fails to secure approval of the employer/carrier before settling his third party action, forfeits his or her right to recover future benefits from the carrier. Cowart v. Nicklos Drilling Co., 907 F.2d 1552 (5th Cir. 1990). If the carrier does not approve in writing, but does acknowledge and participate in the settlement, the courts are split. The Benefit Review Board has held that the § 933(g)(2) bar is inapplicable to medical benefits when a claimant settles a third party suit without the carrier's permission, if the third party settlement is greater than what the claimant was entitled to under the LHWCA. Glenn V. Todd Pacific Ship Yards Corp., 26 BRBS 186 (1993). Under such circumstances, comp benefits are terminated, but medical benefits continue. Within the 5th Circuit, the barred provisions will be enforced, while outside of the 5th Circuit, they generally will not be. Monette v. Chevron USA, Inc., 25 BRBS 267 (1992); Lewis v. Chevron USA, Inc., 25 BRBS 10 (1991).

If you run across a situation where the worker quickly settles with the third party, leaving a large lien unattended to, the carrier has several options. In such circumstances, where the employee settled for less than the carrier's subrogated interest and/or past lien, the release issued to the defendant does not bar the carrier's future claim against the third party. The carrier may sue the employee and owner asserting the third party cause of action. Liberty Mutual v. Emeta, 564 F.2d 1097 (4th Cir. 1977). The carrier may pursue the owner if it was aware of the workers' comp payments, and it can sue the employee, alleging that the employee is the trustee of the money and has received a double recovery. Emeta, *supra*. Under these facts, the carrier may recover from the employee the settlement proceeds, less the attorney's fees and costs.

Summary

The LHWCA presents workers and their attorneys with uncomfortable problems with regard to filing and managing a third party action subject to its lien. The plaintiff cannot settle the case without potentially forfeiting its right to future benefits, and the comp and medical benefits are relatively high under the Act as compared with various states' compensation schemes. In approving a settlement, a carrier is not constrained by any reasonableness or good faith standard. Atkinson v. Gates, 838 F.2d (5th Cir. 1988). Yet, the carrier's written consent is clearly required under all applicable law. The carrier wields power with its ability to force the plaintiff to dismiss its third action, if the proposed settlement is less than the value of the future potential comp and medical entitlement. This leverage is tremendous. A corresponding insistence on maximum subrogation recoveries involving LHWCA benefits should be the carrier's first and best strategy.

Longshore and Harbor Workers Terms and Definitions

Apron: The area immediately in front of or behind a wharf shed on which cargo is lifted. On the "front apron," cargo is unloaded from or loaded onto a ship. Behind the shed, cargo

moves over the “rear apron” into and out of railroad cars.

Barge: A large, flat-bottomed boat used to carry cargo from a port to shallow-draft waterways. Barges have no locomotion and are pushed by tugboats.

Berth: The place where a vessel lies at a wharf. A wharf may have two or three berths, depending on the length of incoming ships.

Bill of Lading: A contract between a shipper and carrier listing the terms for moving freight between specific points.

Bollard: A line-securing device on a wharf around which mooring and berthing lines are fastened.

Bulk Cargo: Loose cargo (dry or liquid) that is loaded (shoveled, scooped, forked, mechanically conveyed or pumped) in volume directly into a ship’s hold; (e.g., grain, coal and oil).

Cargo: The freight (goods, products) carried by a ship, barge, train, truck or plane.

Carrier: An individual, partnership or corporation engaged in the business of transporting goods or passengers.

Common Carrier: Trucking, railroad or ocean carriers that are licensed to transport goods or people nationwide are called common carriers.

Container: A 20, 35, 40 or 45 foot box made of aluminum, steel or fiberglass which can be handled interchangeably among trucks, railcars, barges and ocean going vessels.

Customs Broker: This person prepares the needed documentation for importing goods (just as a freight forwarder does for exports). The broker is licensed by the Treasury Department to clear goods through U.S. Customs.

DWT: Dead Weight Tonnage; Maximum weight of a vessel including the vessel, cargo and ballast.

Deadhead: When a truck returning from a delivery has no return freight on the back haul, it is said to be a deadhead.

Demurrage: A penalty fee assessed when cargo isn’t moved off a wharf before the free time allowance ends.

Dock: (Verb) - To bring in a vessel to tie up at a wharf berth. (One parks a car, but docks a ship.) (Noun) - A dock is a structure built along, or at an angle from, a navigable waterway so that vessels may lie alongside to receive or discharge cargo. Sometimes, the whole wharf is informally called a dock.

Dunnage: Wood or other material used in stowing ship cargo to prevent its movement.

Duty: A government tax on imported merchandise.

Forwarder: Consultant in logistics and international traffic. The forwarding agent assists the exporter in finding the most economic and efficient methods of transporting and storing cargo.

Harbor: A port of haven where ships may anchor.

Interchange: Point of entry/exit for trucks delivering and picking up containerized cargo. Point where pickups and deposits of containers in storage area or yard are assigned.

Intermodal: Relating to cargo which can be handled interchangeably among different transportation modes, i.e., truck, rail, ocean and air.

LCL: The acronym for “less than container load.” It refers to a partial container load that is usually consolidated with other goods to fill a container.

Longshoremen: Individuals who perform services under the direction of a stevedoring company such as operating equipment, rigging cargo or administrative tasks associated with loading and unloading of a vessel.

Manifest: The ship captain's list of individual goods that make up the ship's cargo.

Marine Surveyor: Person who inspects a ship hull or its cargo for damage or quality.

Master: The officer in charge of the ship. "Captain" is a courtesy title often given to a master.

Maritime: (Adj.) Located on or near the sea. Commerce or navigation by sea. The maritime industry includes people working for transportation (ship, rail, truck and towboat/barge) companies, freight forwarders and custom brokers; stevedoring companies; labor unions; chandlers; warehouses; ship building and repair firms; importers/exporters; pilot associations, etc.

Marshaling Yard: Any open area for assembly of cargo for export or placement of imported cargo awaiting inland transport. Container terminals may use a grounded or wheeled layout. If the cargo box is placed directly on the ground, it is called a grounded operation. If the box is on a chassis/trailer, it is a wheeled operation.

NVOCC: A non-vessel-owning common carrier that buys space aboard a ship to get a lower volume rate. An NVOCC then sells that space to various small shippers, consolidates their freight, issues bills of lading and books space aboard a ship.

Ocean Carrier: Diesel-fueled vessels have replaced the old steamships of the past, although many people still refer to modern diesel ships as steamships. Likewise, the person who represents the ship in port is still often called a steamship agent.

On-Dock Rail: Direct shipside rail service. Includes the ability to load and unload containers/breakbulk directly from rail car to vessel.

On-Terminal Rail: Rail service and trackage provided by a railroad within a designated terminal area.

Piggyback: A rail transport mode where a loaded truck trailer is shipped on a rail flatcar.

Port: This term is used both for the harbor area where ships are docked and for the agency (port authority), which administers use of public wharves and port properties.

Quay: A wharf, which parallels the waterline.

Steamship Line: Organization that operates ocean carriers/vessels to transport cargo.

Steamship Agent: The local representative who acts as liaison among the ship owners, local port authorities, terminals and supply/service companies.

Stevedore: Labor management companies that provide equipment and hire workers to transport cargo between ships and docks. Stevedore companies may also serve as terminal operators. The laborers hired by the stevedoring firms are called longshoremen.

Tariff: Schedule, system of duties imposed by a government on the import/export of goods; also charges, rates and rules of a transportation company as listed in published industry tables.

Terminal: The place where cargo is handled is called a terminal (or a wharf).

Toplift: A piece of equipment similar to a forklift that lifts from above rather than below. Used to handle containers in the storage yard to from storage stacks, trucks, and railcars.

Transshipment: The unloading of cargo at a port or point where it is then reloaded, sometimes into another mode of transportation, for transfer to a final destination.

Transtainer: A type of crane used in the handling of containers, which is motorized, mounted on rubber tires and can straddle at least four railway tracks, some up to six, with a lifting capacity of 35 tons for loading and unloading containers to and from railway cars.

Vessel: A ship or large boat.

Vessel Operator: A firm that charters vessels from its service requirements, which are handled by their own offices or appointed agents at ports of call. Vessel operators also handle the operation of vessels on behalf of owners.

Way Bill: The document used to identify the shipper and consignee, present the routing, describe the goods, present the applicable rate, show the weight of the shipment, and make other useful information notations.

Wharf: The place at which ships tie up to unload and load cargo. The wharf typically has a front and rear loading docks (aprons), a transit shed, open (unshedded) storage areas, truck bays and rail tracks.

SUBMIT YOUR SUBROGATION QUESTIONS OVER THE INTERNET

Many of our clients are taking advantage of the feature of our web site located at www.mwl-law.com. Our web site contains a link entitled "Submit Subrogation Questions". Simply click on the link, and a form will appear on which you can submit subrogation questions from all lines of insurance to subro professionals. Questions are usually responded to within a day after receiving the question. When submitting questions, please be sure to include all relevant information regarding the question, such as the line of insurance involved, the date of loss (if relevant), and the state or states involved. If additional information is needed, a clarification e-mail will be sent to you. We continue to look for innovative and efficient ways of serving our clients' subrogation needs. Please feel free to utilize this free service the next time you have a subrogation issue or question that arises.

SEMINARS

Matthiesen, Wickert & Lehrer, S.C. offers a variety of subrogation and insurance related seminars. To schedule a seminar or request a presentation on a particular topic or topics, please contact Gary Wickert at gwickert@mwl-law.com or fax your request to (262) 673-3766.

NOTICE

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REQUESTS?

If anyone has any issues which are consistently being encountered and you would like a particular topic addressed in this newsletter, please contact Gary Wickert at (262) 673-7850 or at gwickert@mwl-law.com. Any subrogation or insurance related topics are fair game and we look forward to the challenge of tackling a matter of particular importance or relevance to you.

Call (262) 673-7850