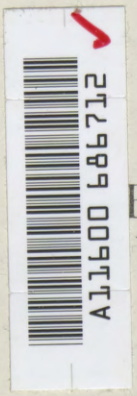
LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION



HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

EIGHTY-FOURTH CONGRESS

FIRST SESSION

ON

S. 594

A BILL TO AMEND SECTION 6 OF THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT SO AS TO PROVIDE INCREASED BENEFITS IN CASES OF DISABLING INJURIES, AND FOR OTHER PURPOSES

S. 1307

A BILL TO AMEND THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT, AS AMENDED, TO PROVIDE INCREASED BENEFITS IN CASE OF DISABLING INJURIES, AND FOR OTHER PURPOSES

S. 1308

A BILL TO AMEND THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT TO AUTHORIZE MORE EFFECTIVE USE OF THE SPECIAL FUND PROVIDED FOR IN SECTION 44

S. 1646

A BILL TO AMEND THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT SO AS TO PROVIDE INCREASED BENEFITS IN CASES OF DISABLING INJURIES, AND FOR OTHER PURPOSES

S. 2280

A BILL TO AMEND THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT, AS AMENDED, TO PROVIDE INCREASED BENEFITS IN CASE OF DISABLING INJURIES, AND FOR OTHER PURPOSES

JUNE 23 AND 24, 1955

Printed for the use of the Committee on Labor and Public Welfare

UNITED STATES
GOVERNMENT PRINTING OFFICE
64677 WASHINGTON : 1955

COMMITTEE ON LABOR AND PUBLIC WELFARE

LISTER HILL, Alabama, *Chairman*

JAMES E. MURRAY, Montana	H. ALEXANDER SMITH, New Jersey
MATTHEW M. NEELY, West Virginia	IRVING M. IVES, New York
PAUL H. DOUGLAS, Illinois	WILLIAM A. PURTELL, Connecticut
HERBERT H. LEHMAN, New York	BARRY M. GOLDWATER, Arizona
JOHN F. KENNEDY, Massachusetts	GEORGE H. BENDER, Ohio
PAT McNAMARA, Michigan	GORDON ALLOTT, Colorado

STEWART E. MCCLURE, *Staff Director*

SUBCOMMITTEE ON LABOR

PAUL H. DOUGLAS, Illinois, *Chairman*

MATTHEW M. NEELY, West Virginia	H. ALEXANDER SMITH, New Jersey
JOHN F. KENNEDY, Massachusetts	BARRY M. GOLDWATER, Arizona

JOHN S. FORSYTHE, *General Counsel to the Committee*
FRANK V. CANTWELL, *Professional Staff Member*

CONTENTS

LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION

THURSDAY, JUNE 23, 1955

UNITED STATES SENATE,
SUBCOMMITTEE ON LABOR OF THE COMMITTEE ON
LABOR AND PUBLIC WELFARE,
Washington, D. C.

The subcommittee met at 10 a. m., pursuant to notice, in room P–63 of the Capitol, Senator Paul H. Douglas (chairman of the subcommittee) presiding.

Present: Senator Douglas.

Present also: Stewart E. McClure, staff director of the committee; Roy E. James, minority staff director; John S. Forsythe, counsel to the committee; Frank V. Cantwell and Michael J. Bernstein, professional staff members; and Grover C. Smith, chief clerk.

Senator DOUGLAS. The subcommittee will come to order. The Subcommittee on Labor here meets this morning to hear testimony on five bills amending the Longshoremen's and Harbor Workers' Compensation Act, which as we all know applies also to the District of Columbia. At the time the hearing was announced, the subcommittee had pending before it the following bills: S. 594, introduced by Senator Morse and 15 others; S. 1307 and S. 1308, introduced by Senator Smith of New Jersey; and S. 1646, introduced by Senator Magnuson of Washington.

Yesterday the chairman of the Committee on Labor and Public Welfare, Senator Hill, referred to this subcommittee a fifth bill, S. 2280, which had been introduced on Tuesday of this week by Senators Magnuson, Morse and 14 other sponsors. S. 2280 is a consolidation of S. 594 and S. 1646, with certain additional provisions. All of the sponsors of S. 594 have joined with Senators Magnuson and Morse in introducing this latest bill.

Therefore, it supersedes, as I understand it, S. 594 and S. 1646. Because S. 2280 had not been introduced in the Senate at the time the witnesses were invited to appear, I think it only fair that they may file any supplementary statements with respect to this particular bill, S. 2280, which they may find desirable.

(The bills, S. 594, S. 1307, S. 1308, S. 1646, and S. 2280, and Departmental reports are as follows:)

[S. 594, 84th Cong., 1st sess.]

A BILL To amend section 6 of the Longshoremen's and Harbor Workers' Compensation Act so as to provide increased benefits in cases of disabling injuries, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6 of the Longshoremen's and Harbor Workers' Compensation Act, as amended (U. S. C., title 33, sec. 906), is amended to read as follows:

"SEC. 6. (a) No compensation shall be allowed for the first three days of the disability, except the benefits provided for in section 7: *Provided, however,* That in case the injury results in disability of more than fourteen days the compensation shall be allowed from the date of disability.

"(b) Compensation for disability shall not exceed $50 per week and compensation for total disability shall not be less than $20 per week: *Provided, however,* That if the employee's average weekly wages, as computed under section 10, are less than $20 per week he shall receive as compensation for total disability his average weekly wages."

[S. 1307, 84th Cong., 1st sess.]

A BILL To amend the Longshoremen's and Harbor Workers' Compensation Act, as amended, to provide increased benefits in case of disabling injuries, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6 of the Longshoremen's and Harbor Workers' Compensation Act, as amended (44 Stat. 1424; 33 U. S. C. 901 and the following), is amended to read as follows:

"SEC. 6. (a) No compensation shall be allowed for the first seven days of the disability, except the benefits provided for in section 7: *Provided, however,* That in case the injury results in disability of more than twenty-eight days the compensation shall be allowed fromthe date of disability.

"(b) Compensation for disability shall not exceed $50 per week and compensation for total disability shall not be less than $15 per week: *Provided, however,* That if the employee's average weekly wages, as computed under section 10, are less that $15 per week he shall receive as compensation for total disability his average weekly wages."

SEC. 2. Section 9 (e) of the Longshoremen's and Harbor Workers' Compensation Act, as amended, is amended to read as follows:

"(e) In computing death benefits the average weekly wages of the deceased shall be considered to have been not more than $75 nor less than $22.50, but the total weekly compensation shall not exceed the weekly wages of the deceased."

SEC. 3. The provisions of this Act shall be applicable only to injuries and death occurring on or after the effective date of its enactment. The amendments to section 6 and section 9 of the Longshoremen's and Harbor Workers' Compensation Act shall not affect the payment of any benefits heretofore adjudicated under the Act of December 2, 1942, as amended (56 Stat. 1028; 42 U. S. C. 1701, and the following) prior to the enactment of this Act.

[S. 1308, 84th Cong., 1st sess.]

A BILL To amend the Longshoremen's and Harbor Workers' Compensation Act to authorize more effective use of the special fund provided for in section 44

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8 (g) of the Longshoremen's and Harbor Workers' Compensation Act, as amended (44 Stat. 1424; 33 U. S. C. 901, and the following), is amended by striking out "$10" and inserting in lieu thereof "$25".

SEC. 2. Section 18 of the Longshoremen's and Harbor Workers' Compensation Act is amended by inserting "(a)" after "18" at the beginning of the section and by adding a new subsection (b) to read as follows:

"(b) In cases where judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment, the Secretary of Labor may, in his discretion and to the extent he shall determine advisable after consideration of current commitments payable from the special fund established in section 44 make payment from such fund upon any award made under this Act, and in addition, provide any necessary medical, surgical, and other treatment required by section 7 of the Act in any case of disability where there has been a default in furnishing medical treatment by reason of the insolvency of the employer. Such an employer shall be liable for payment into such fund of the amounts paid therefrom by the Secretary of Labor under this subsection; and for the purpose of enforcing this liability, the Secretary of Labor for the benefit of the fund shall be subrogated to all the rights of the person receiving such payment or benefits, including the right of lien and priority provided for by section 17 of this Act, as against the employer and may by a proceeding in the name of the Secretary of Labor under section 18 or under subsection (c) of section 21 of this Act, or both,

seek to recover the amount of the default or so much thereof as in the judgment of the Secretary is possible, or the Secretary may settle and compromise any such claim."

SEC. 3. (a) Section 39 (c) of the Longshoremen's and Harbor Worker's Compensation Act is amended by striking out "education" at the end of the first sentence and inserting in lieu thereof "rehabilitation".

(b) Section 39 (c) of such Act is further amended by striking out the last sentence and inserting in lieu thereof the following two sentences: "Where necessary rehabilitation services are not available otherwise, the Secretary of Labor may, in his discretion, use the fund provided for in section 44 in such amounts as may be necessary to procure such services, including necessary prosthetic appliances or other apparatus. This fund shall also be available in such amounts as may be authorized in annual appropriations for the Department of Labor for the costs of administering this subsection."

SEC. 4. (a) Section 44 (a) of the Longshoremen's and Harbor Workers' Compensation Act is amended by striking out "of this Act" at the end of the first sentence and inserting in lieu thereof a comma and the following: "of subsection (b) of section 18, and of subsection (c) of section 39 of this Act".

(b) The second sentence of paragraph (1) of section 44 (c) of such Act is amended to read as follows: "The proceeds of this fund shall be available for payments under subsections (f) and (g) of section 8, under subsection (b) of section 18 and under subsection (c) of section 39: *Provided*, That payments authorized by subsection (f) shall have priority over other payments authorized from the fund."

[S. 1646, 84th Cong., 1st sess.]

A BILL To amend the Longshoremen's and Harbor Workers' Compensation Act so as to provide increased benefits in cases of disabling injuries and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6 of the Longshoremen's and Harbor Workers' Compensation Act, as amended (U. S. C., title 33, sec. 906), is amended to read as follows:

"SEC. 6. (a) No compensation shall be allowed for the first three days of the disability, except the benefits provided for in section 7: *Provided, however*, That in case the injury results in disability of more than fourteen days the compensation shall be allowed from the date of disability.

"(b) Compensation for disability shall not exceed $50 per week and compensation for total disability shall not be less than $20 per week: *Provided, however*, That if the employee's average weekly wages, as computed under section 10, are less than $20 per week he shall receive as compensation for total disability his average weekly wages."

SEC. 2. Subparagraphs (1) through (12) of section 8 (c) (title 33 U. S. C. sec. 908) of the said Act are hereby amended to read as follows:

"(1) Arm lost, three hundred and twelve weeks' compensation.
"(2) Leg lost, two hundred and eighty-eight weeks' compensation.
"(3) Hand lost, two hundred and forty-four weeks' compensation.
"(4) Foot lost, two hundred and five weeks' compensation.
"(5) Eye lost, one hundred and sixty weeks' compensation.
"(6) Thumb lost, seventy-five weeks' compensation.
"(7) First finger lost, forty-six weeks' compensation.
"(8) Great toe lost, thirty-eight weeks' compensation.
"(9) Second finger lost, thirty weeks' compensation.
"(10) Third finger lost, twenty-five weeks' compensation.
"(11) Toe other than great toe lost, sixteen weeks' compensation.
"(12) Fourth finger lost, fifteen weeks' compensation."

SEC. 3. Section 9 (e) (title 33 U. S. C. 909e) of the said Act is hereby amended to read as follows:

"(e) In computing death benefits the average weekly wages of the deceased shall be considered to have been not more than $75 nor less than $30 but the total weekly compensation shall not exceed the weekly wages of the deceased."

SEC. 4. Section 14 (m) (title 33 U. S. C. 914 (m)) of the said Act is hereby repealed.

[S. 2280, 84th Cong., 1st sess.]

A BILL To amend the Longshoremen's and Harbor Workers' Compensation Act, as amended, to provide increased benefits in case of disabling injuries, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6 of the Longshoremen's and Harbor Workers' Compensation Act, as amended (U. S. C., title 33, sec. 906), is amended to read as follows:

"SEC. 6. (a) No compensation shall be allowed for the first three days of the disability, except the benefits provided for in section 7: *Provided, however*, That in case the injury results in disability of more than fourteen days the compensation shall be allowed from the date of disability.

"(b) Compensation for disability shall not exceed $50 per week and compensation for total disability shall not be less than $20 per week: *Provided, however*, That if the employee's average weekly wages, as computed under section 10, are less than $20 per week he shall receive as compensation for total disability his average weekly wages."

SEC. 2. Subparagraphs (1) through (12) of section 8 (c) (title 33 U. S. C., sec. 908) of the said Act are hereby amended to read as follows:

"(1) Arm lost, three hundred and twelve weeks' compensation.
"(2) Leg lost, two hundred and eighty-eight weeks' compensation.
"(3) Hand lost, two hundred and forty-four weeks' compensation.
"(4) Foot lost, two hundred and five weeks' compensation.
"(5) Eye lost, one hundred and sixty weeks' compensation.
"(6) Thumb lost, seventy-five weeks' compensation.
"(7) First finger lost, forty-six weeks' compensation.
"(8) Great toe lost, thirty-eight weeks' compensation.
"(9) Second finger lost, thirty weeks' compensation.
"(10) Third finger lost, twenty-five weeks' compensation.
"(11) Toe other than great toe lost, sixteen weeks' compensation.
"(12) Fourth finger lost, fifteen weeks' compensation."

SEC. 3. Section 9 (e) (title 33 U. S. C. 909e) of the said Act is hereby amended to read as follows:

"(e) In computing death benefits the average weekly wages of the deceased shall be considered to have been not more than $75 nor less than $30 but the total weekly compensation shall not exceed the weekly wages of the deceased."

SEC. 4. Section 14 (m) (title 33 U. S. C. 914 (m)) of the said Act is hereby repealed.

SEC. 5. The amendments made by the foregoing provisions of this Act shall become effective upon enactment.

DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, D. C., May 6, 1955.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
United States Senate, Washington 25, D. C.

DEAR SENATOR HILL: This is in further reply to your request for my comments on S. 594, a bill to amend section 6 of the Longshoremen's and Harbor Workers' Compensation Act so as to provide increased benefits in cases of disabling injuries and for other purposes.

I am very much in favor of increasing the effectiveness of this act, which the Department of Labor administers. The liberalization of the benefits of the act was recommended by the President in his recent budget message. A bill designed to accomplish his recommendation, S. 1307, has been approved by the Bureau of the Budget as being in accordance with the President's program, and is now pending before your committee. S. 1307 in my opinion, more equitably balances employee advantages and employer obligations than does S. 594.

The provisions of S. 594 and S. 1307 are identical in authorizing an increase from $35 to $50 a week in the maximum compensation payable under the act in disability cases. However, S. 1307 also authorizes a comparable and equally necessary increase of benefits in death cases.

The Longshoremen's Act declares that 66⅔ percent of the wage loss suffered through injuries in employment covered by the act will be compensable. This legal percentage is countered, however, by another provision prescribing a maximum limit of $35 a week. The limit was established in 1948, almost 7 years ago. The proportion of wage loss which $35 a week compensates has declined commensurately as the cost of living has increased. Significantly, in some ports

longshoremen at the present time average a wage of $90 a week. The proposed maximum of $50 a week will tend to bring compensation payments under the Longshoremen's Act more in line with its intent that a substantial proportion of the wage loss will fall on the stevedoring industry instead of the injured employee, or his survivors in fatal cases. I urge favorable consideration of this provision removing the unjustified $35 weekly ceiling.

There are two other principal differences between S. 1307 and S. 594. These relate to the amount of increase in the minimum weekly benefit and the length of the waiting period.

As to the increase in the minimum weekly benefits: S. 1307 increases it from $12 to $15 a week, while S. 594 puts the minimum up to $20 a week. The matter of a minimum weekly benefit is a very tricky problem in a program of this kind. It cannot be assumed that the minimum benefit should be raised at the same rate as the maximum whenever a benefit structure is liberalized. The minimum and maximum figures serve entirely different and unrelated purposes. The basic pattern is that people should be paid benefits at the rate of about two-thirds of their average weekly wage. Any fixed dollar maximum means that this principle is to some extent violated and that some people will be paid less than two-thirds of their average wage. It is therefore extremely important to have the fixed dollar maximum high enough so that the number of people deprived of the basic right to two-thirds of their wages is kept fairly small.

On the other hand, a fixed dollar minimum means that some people will be paid more than two-thirds of their average wage. There is no more unhealthy and dangerous situation in the entire realm of income insurance than the payment of insured benefits for idleness which approach too closely the beneficiary's income while actively at work. The man who has been earning $21 a week, who is then injured, and who discovers that he then can draw $20 a week for the duration of his disability, is under considerable temptation to protract his disability as long as possible. The more you increase your fixed minimum, the more you multiply the chances that this will ocur.

It may be argued that the minimum must be high enough to provide a decent standard of living. This raises the fundamental question: What kind of people are affected by the minimum? How could it happen that someone under the Longshoremen's Act or in the District of Columbia could be earning as little as $10 or $12 a week? One answer is that it is frequently people who work part time or who have more than one job that invoke this minimum. In the latter case, therefore, the weekly earnings involved in the workmen's compensation calculation may be only a fraction of what the worker regularly relied on for support and during his disability his other source of support may continue.

On the other hand, we recognize that some minimum is justified, since there are some people particularly in the District of Columbia to whom the compensation benefit will be the sole source of support, and since the amount of the benefit in such cases ought to be enough to make it unnecessary to apply for public relief. The figure of $15 meets this description, since it brings the minimum monthly benefit to a point slightly higher than the average payments now being made for public assistance.

Finally, we have the question of the appropriate length of the waiting period. Here again we encounter a fundamental question about the nature, purpose, and function of not only workmen's compensation but all income insurance. These systems do not aspire to replace every dollar lost by the persons covered. Their purpose, like that of all insurance, is to deal with serious losses—losses of such a major character that the elaborate mechanism of insurance is justifiable. In private insurance, it would never occur to us to take out an insurance policy against the loss of something worth $20 or $30. The administrative cost, the cost of commissions, and all the bother and trouble involved would not be warranted, since we would probably figure that we could somehow manage to replace the $30 item. Similarly, in income insurance, it is difficult to justify setting in motion the complex and expensive machinery of administration merely to replace a loss of $30.

The American philosophy of income insurance recognizes that, even with the best intentions, most people cannot by private saving protect themselves against major wage loss due to disability, death, and the like. This does not mean, however, that we should swing to the opposite extreme and assume that no part whatever of the job should be done by private saving. We believe that it is not asking too much of working people, at present wage levels, to have enough savings or private resources to get through 1 week of wage loss without setting in motion all the machinery of workmen's compensation. This is why we prefer to keep the basic waiting period before benefits are paid to 1 week.

If the waiting period is reduced to 3 days, it simply means that there will be a large number of added cases, which will greatly increase administrative costs out of all proportion to the amount of real good accomplished. It will put a few dollars in the pockets of a large number of people suffering comparatively minor losses, but it will avert no major tragedies. The same amount of money could be much better spent, so to speak, at the other end; that is, by making more complete payments to people who are suffering real hardship.

There is just one more variable factor in this waiting period, and that is the number of days of disability which must elapse before the system reaches back and pays benefits for the original waiting period. S. 1307 puts this at 28 days; S. 594 puts it at 14 days. In other words, S. 1307 says that, although you get nothing for the first week of disability, if the disability persists for 28 days, you are then entitled to have payments for the first week. The thing to watch in this kind of provision is the danger that, if the period is made too short, a temptation is created to stretch the disability long enough to pick up the waiting period payment. Suppose, for example, you had a 1-week waiting period, but at the end of 14 days of disability, the claimant would be entitled to payment for the waiting period. Suppose the claimant had been genuinely disabled for 10 days. Subtracting the waiting period, he is entitled to compensation for only 3 days. But if he can hold out and make his disability last a few days longer, to get past the 14-day mark, then he recovers benefits for 14 days instead of 3, or almost 5 times as much benefits by adding about 3 days disability. To avoid this kind of possibility, it is necessary to make the applicable period sufficiently long to remove the temptation of stretching the disability in this fashion. We believe that the 28-day period is appropriate and workable, but that the 14-day period is so short as to raise the possibility of this kind of temptation.

For the above reasons, I recommend enactment of S. 1307 rather than S. 594.

The Bureau of the Budget advises that it has no objection to the submission of this report.

Sincerely yours,

ARTHUR LARSON,
Under Secretary of Labor.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington 25, D. C., March 21, 1955.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
United States Senate, Washington 25, D. C.

MY DEAR MR. CHAIRMAN: This will acknowledge your letters of January 22, 1955, and March 5, 1955, inviting the Bureau of the Budget to comment on S. 594, to amend section 6 of the Longshoremen's and Harbor Workers' Compensation Act so as to provide increased benefits in cases of disabling injuries, and for other purposes, and S. 1307, to amend the Longshoremen's and Harbor Workers' Compensation Act, as amended, to provide increased benefits in cases of disabling injuries, and for other purposes.

The President's budget message for 1956 recommended legislation to liberalize workmen's compensation benefits paid to longshoremen and harbor workers under laws administered by the Federal Government. S. 1307 provides a substantial increase in maximum benefits for disability and comparable increases in computing death benefits. It also provides for reduction in waiting periods and prevents retroactive payments in certain war hazard cases. The Bureau of the Budget believes that the provisions of S. 1307 are preferable to those of S. 594 as a means of liberalizing and perfecting the Longshoremen's and Harbor Workers' Act.

In view of the foregoing, the Bureau of the Budget recommends the enactment of S. 1307 rather than S. 594.

Sincerely yours,

DONALD R. BELCHER,
Assistant Director.

DEPARTMENT OF LABOR,
OFFICE OF THE SOLICITOR,
Washington 25, D. C., March 9, 1955.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
United States Senate, Washington 25, D. C.

DEAR SENATOR HILL: The Secretary has asked me to acknowledge your letters of March 5, 1955, requesting reports on the following bills:

S. 1307, a bill to amend the Longshoremen's and Harbor Workers' Compensation Act, as amended, to provide increased benefits in case of disabling injuries, and for other purposes;

S. 1308, a bill to amend the Longshoremen's and Harbor Workers' Compensation Act to authorize more effective use of the special fund provided for in section 44; and

S. 1309, a bill to amend the Federal Employees' Compensation Act, approved September 7, 1916, as amended, by providing for reimbursement of expenditures from the employees' compensation fund by Federal employing agencies, and for other purposes.

Reports on these bills will be submitted in the very near future.

Very truly yours,

STUART ROTHMAN,
Solicitor of Labor.

MARCH 28, 1955.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
United States Senate, Washington 25, D. C.

DEAR SENATOR HILL: This is in further reply to your request for my comments on S. 1307, a bill to amend the Longshoremen's and Harbor Workers' Compensation Act, as amended, to provide increased benefits in case of disabling injuries, and for other purposes.

I am very much in favor of increasing the effectiveness of this act which the Department of Labor administers. The liberalization of benefits under the act was recommended by the President in his recent budget message. The proposals contained in S. 1307 have been approved by the Bureau of the Budget as being in accord with the program of the President. They are part of the legislative program of the Department of Labor.

S. 1307 would authorize an increase from $35 to $50 a week in the maximum compensation payable under the Longshoremen's Act in disability and in death cases. The basic standard for compensation of a disabled employee under the act, or for his dependents in fatal cases, is two-thirds of the employee's average weekly wage. However, far less than this amount can actually be paid for the support of an injured employee and his family under the law as it stands today. This is due to the $35 weekly maximum limitation, which has remained unchanged since its last adjustment by the Congress in 1948. At present wage levels and living costs, a longshoreman working at the straight-time rates established for standard cargo in Atlantic and Pacific ports cannot obtain workmen's compensation benefits amounting to more than 35 or 40 percent of his earnings for a 40-hour week. The revision of this limitation, as proposed by S. 1307, would permit the payment of benefits in injury and death cases commensurate with the stated objective of the law.

Likewise, I recommend an increase in the minimum compensation limit from $12 to $15 a week, which S. 1307 would authorize.

S. 1307 would reduce the excessively long waiting period of 49 days before compensation may be drawn for the initial 7-day waiting period. In my opinion an employee who suffers a disability lasting as long as 28 days should be entitled, as provided in this bill, to receive compensation from the beginning of his disability.

S. 1307 provides that the increased benefits proposed by it will not apply retroactively to cases in which compensation has been previously awarded to Government contractors' employees under the War Hazards Act.

The Federal Government assumes the costs of payments of compensation under the War Hazards Act to these employees injured by reason of war hazards, with benefits determined in accordance with the Longshoremen's and Harbor Workers' Compensation Act. The War Hazards Act was amended in 1948 to provide that all future increases in benefits in the Longshoremen's Act, without limitation as to time, would be retroactively applied from the date of injury to all cases

previously adjudicated under the War Hazards Act. This provision, in my opinion, singles out this one group of employees for preferential treatment in a manner which discriminates against other groups of employees who also sustained injuries arising out of war conditions but who are compensated under other Federal statutes which do not contain provisions for increasing their adjudicated benefits. S. 1307 would remedy this situation.

I urge favorable consideration of S. 1307, which has my full support.

Sincerely yours,

JAMES P. MITCHELL,
Secretary of Labor.

DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, D. C., March 25, 1955.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
United States Senate, Washington, D. C.

DEAR SENATOR HILL: This is in further reply to your request for my comments on S. 1308, a bill to amend the Longshoremen's and Harbor Workers' Compensation Act to authorize more effective use of the special fund provided for in section 44.

I am very much in favor of increasing the effectiveness of this act, which the Department of Labor administers. The achievement of this purpose was recommended by the President in his state of the Union message and his budget message. The proposals contained in S. 1308 have been approved by the Bureau of the Budget as in accord with the program of the President. They are part of the legislative program of the Department of Labor.

S. 1308 would make it possible to use the special fund, authorized by section 44 of the Longshoremen's Act, to meet more adequately the needs of disabled employees. The special fund is not established by appropriations. It is derived from the payments of $1,000 required of each employer in fatal injury cases where there are no survivors eligible for benefits, and from fines and penalties collected for infractions of the act. S. 1308 contemplates no additional collections but merely a more diversified use of the special fund as it is presently established.

The purposes for which the special fund may be used are so limited that the principal constantly increases. Receipts into the fund for the past few years have averaged approximately $35,000 a year and disbursements have averaged only $10,000. On June 30, 1954, the fund totaled $734,522.

At the present time the fund may be used to continue payments when total disability results from a second injury and the payments attributable to the second injury have been exhausted. It may be used also to pay a maintenance allowance up to $10 a week for employees undergoing vocational rehabilitation and to furnish needed prosthetic devices.

S. 1308 would continue the authority of the act to pay compensation to employees who are totally disabled as a result of a second injury compensable under the act. Further, the bill establishes a priority for payments from the special fund for this purpose. S. 1308 would also increase the maximum rehabilitation allowance from $10 to $25 a week. It would otherwise improve rehabilitation services by authorizing use of the special fund to procure rehabilitation services where necessary services are not available through existing facilities. In order to aid and encourage employees to obtain rehabilitation, the Secretary of Labor also would be permitted to use the special fund for administrative expenses in such amounts as are authorized in special appropriations. Finally, the bill authorizes the payment of awards in the discretion of the Secretary of Labor in cases where the insolvency of the employer or his estate precludes the collection of compensation awarded under the act.

The additional needs, which S. 1308 would meet through a reallocation of the special fund, are basic and vital. The increased rehabilitation allowance will facilitate rehabilitation possibilities. Where unusual circumstances prevent the expanded Federal-State vocational program from furnishing needed services, the Secretary of Labor would have the authority to procure the services. Finally, in those rare cases where employees are unable to obtain satisfaction of awards under the act from their employers, they could be taken care of through disbursements from the special fund at the Secretary's discretion.

Since all of these needs are deserving and compelling, I urge the committee's favorable consideration of S. 1308.

The Bureau of the Budget advises that it has no objection to the submission of this report.

Sincerely yours,

JAMES P. MITCHELL,
Secretary of Labor.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington 25, D. C., April 14, 1955.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
United States Senate, Washington 25, D. C.

MY DEAR MR. CHAIRMAN: This will acknowledge your letter of March 5, 1955, inviting the Bureau of the Budget to report on S. 1308, to amend the Longshoremen's and Harbor Workers' Compensation Act to authorize more effective use of the special fund provided for in section 44.

The President's budget message for 1956 recommended legislation to liberalize workmen's compensation benefits paid to longshoremen and harbor workers under laws administered by the Federal Government. S. 1308 would make it possible to use the special fund, authorized by section 44 of the Longshoremen's Act, to meet more adequately the needs of disabled employees. This special fund is not established by appropriation but is derived from the payments of $1,000 required of each employer in fatal injury cases where there are no survivors eligible for benefits, and from fines and penalties collected for infractions of the act. S. 1308 contemplates no additional collections but merely a more diversified use of the special fund as it is presently established.

I am authorized to advise you that the enactment of S. 1308 would be in accord with the program of the President.

Sincerely yours,

DONALD R. BELCHER,
Assistant Director.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington 25, D. C., May 27, 1955.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
United States Senate, Washington 25, D. C.

MY DEAR MR. CHAIRMAN: This will acknowledge your letter of April 2, 1955, inviting the Bureau of the Budget to report on S. 1646, to amend the Longshoremen's and Harbor Workers' Compensation Act so as to provide increased benefits in cases of disabling injuries and for other purposes.

The President's budget message for 1956 recommended legislation to liberalize workmen's compensation benefits paid to longshoremen and harbor workers under laws administered by the Federal Government. S. 1307 provides a substantial increase in maximum benefits for disability and comparable increases in computing death benefits. It also provides for reduction in waiting periods and prevents retroactive payments in certain war hazard cases.

The Bureau of the Budget believes that the provisions of S. 1307 are preferable to those of S. 1646 and recommends the enactment of S. 1307 rather than S. 1646.

Sincerely yours,

DONALD R. BELCHER, *Assistant Director.*

Senator DOUGLAS. The subcommittee has invited all of the principal sponsors of the bills under consideration to present testimony this morning. Senator Magnuson has informed me that he is obliged to be away from Washington today, and will submit a statement for the record in support of the bills, now the bill, he is sponsoring. Senator Smith, of course, is a distinguished member of this subcommittee. We regret that he is ill and unable to be here this morning. We know he would be here if health permitted.

(Senator Magnuson's statement follows:)

STATEMENT OF WARREN G. MAGNUSON, UNITED STATES SENATOR FROM THE STATE OF WASHINGTON

Mr. CHAIRMAN: The committee has before it several bills proposing amendments to the Longshoremen's and Harbor Workers' Act. One of these bills—S. 2280—has been called the Magnuson-Morse bill. It is perhaps more comprehensive than some of the others and bears the names of Senators Morse, Douglas, Green, Hill, Humphrey, Jackson, Kilgore, Lehman, Long, Mansfield, McNamara, Murray, Neely, Neuberger, Pastore, and myself, as cosponsors.

I urge the committee to approve this legislation. I think it is sound and equitable.

S. 2280 proposes to raise the maximum weekly benefit to $50 and the minimum to $20 per week. In addition, it proposes and increase in the schedules of indemnities and, further, would repeal the present ceiling on death benefits.

The Longshoremen's and Harbor Workers' Act was passed in 1927. It was last amended in 1948. Since 1948 wage levels have increased and—if the philosophy of the original act is adhered to—the increases we are proposing are fully justified.

The original act provided that the average disabled longshoreman would receive benefits equal to approximately two-thirds his weekly earnings. In the meantime, wage levels have increased while benefits provided under the act remain static. In consequence, the schedule of benefits contained in the act today yield less than one-half the average weekly earnings for disabled longshoremen. S. 2280 is aimed at eliminating this discrepancy.

The schedule of indemnities listed in section 2 of the bill are identical to the schedule of indemnities presently applicable to Government employees. It seemed logical to me and the other sponsors that the pattern approved by the Congress for Government employees should in equity be applied to longshoremen and harborworkers.

Also, we have reduced the waiting period from 7 to 3 days and have provided that if the disability exceeds 14 days the benefits shall be retroactive to the date of injury.

I call the committee's attention to the fact that at least 1 west coast State—Oregon—has no waiting period. Eight States and Alaska have a waiting period of 3 days. Florida and Puerto Rico have a waiting period of 4 days and 4 States have waiting periods of 5 days.

It seems logical again to sponsors of S. 2280 that a 3-day waiting period is reasonable. Longshoremen and harborworkers generally speaking, have little or no backlog of savings to draw upon when injury occurs. The loss of income during the waiting period is very serious to both the workers and their dependents.

Finally, Mr. Chairman, we propose that the ceiling on death benefits be eliminated.

Mr. Chairman, I will not attempt to discuss the bill in detail because you have many witnesses scheduled who will go into those matters fully. I do wish to observe that S. 2280 does not correct all the defects in the Longshoremen's and Harbor Workers' Act. It, however, represents a good start and deals with the most important items.

I ask unanimous consent to submit for the record a letter I have received recently from local 32 of the International Longshoremen's and Harbor Workers' Union of Everett, Wash. This letter and its attachment point up some of the provisions of the present act which—in the judgment of that local—require amendment. I call the committee's attention to the fact that 89 members of the union have endorsed these recommendations by appending their signatures to it.

I ask the committee and the staff to study these recommendations for possible action during the 84th Congress.

In closing, I again urge the committee to take favorable action on S. 2280.

Senator DOUGLAS. We hope to have with us Senator Morse of Oregon, who will present testimony on the bills he is sponsoring. We scheduled him as the first witness, but since he is not here I think we should hear from Mr. Arthur Larson, Under Secretary of Labor, with the understanding that if and when Senator Morse comes in we will be willing to lay aside your testimony for a minute or two so that we can hear Senator Morse.

Mr. Larson, we are very glad to have you here with us.

STATEMENTS OF HON. ARTHUR LARSON, UNDER SECRETARY OF LABOR, AND WILLIAM D. DRISCOLL, DEPUTY DIRECTOR, BUREAU OF EMPLOYEES' COMPENSATION, DEPARTMENT OF LABOR

Mr. LARSON. These proposals you have before you today, Mr. Chairman, will bring about, if adopted, some very much needed improvements in the Longshoremen's and Harbor Workers' Compensation Act.

The Department of Labor, of course, has a very special interest in this act since it is charged with its administration and also since the elevating of workmen's compensation standards generally is one of the most active concerns of the Department at this time.

It is very gratifying that you are considering improvement of this act, which is an objective which the President recommended in both his state of the Union and budget messages of this year.

This act provides workmen's compensation coverage for more than 400,000 longshoremen, ship servicemen, and repairmen employed in the navigable waters of the United States.

Senator DOUGLAS. It does not include sailors on the high seas?

Mr. LARSON. That is right. As you have mentioned, through legislative extension, it is also the Workmen's Compensation Act for all private employees of private employers in the District of Columbia. Then there are a couple of other extensions. For example, the benefits of the act are the measure of compensation payable by the Federal Government for injuries sustained through war risk hazards by Government contractors' employees working outside the continental United States.

It is also the Workmen's Compensation Act for Government contractors' employees outside of the continental United States.

Senator DOUGLAS. Do you have an estimate as to the total number covered by the act, that is, how many are covered in the District of Columbia and these other categories that you mentioned?

Mr. LARSON. I would say, taking the longshoremen and the District, it would be about 600,000. It is a little hard to say how many would be covered under the other related acts, since that rises and falls.

The variety of people, areas, and industries covered is one of the things I think that should be kept in mind throughout this discussion, because I do not know of any other act that attempts to cover such a wide range of geographical areas, of industries and so on.

That means that when you are talking about maximums and minimums and other provisions of the act, you have to have an extreme range or degree of flexibility so that you can accommodate all of these different areas, and all of these different kinds of employment.

Now, although this act is administered by the Department of Labor, I think it is very important to remember that the benefits are not provided by the Government. It is not like the Federal Employees' Compensation Act in which the Federal Government out of appropriations simply pays benefits to certain employees of the Government. The benefits under the Longshoremen's Act are just like those under most State compensation acts. They are provided by private employers through private insurance, and the only function

of the Government generally is to set the rules and to handle the administration and the settlement of disputes.

The Department of Labor is sponsoring two of the bills before you, S. 1307 and S. 1308. S. 1307 is the one which raises the maximum and minimum benefits and so on. S. 1308 is primarily designed to facilitate rehabilitation on a wider scale through use of a special fund created by section 44. It does 2 or 3 other things.

These proposals are part of the regular legislative program of the Department. They are designed to carry out the President's recommendations for improvement in the Longshoremen's Act, and have been approved by the Bureau of the Budget.

The first proposal, and the one which by all odds is the most important proposal involved, is, of course, the proposal to raise the maximum limit on weekly benefits from the present $35 to $50 a week. This appears in the administration's S. 1307, and it also appears in S. 1646 and S. 594, and in the consolidated new S. 2280.

In S. 594, possibly through oversight, it was not applied to death cases, but I take it the consolidation of S. 2280 takes care of that.

In dealing with the question of where you set this maximum ceiling on benefits, you have to go right back to the beginning and ask yourself just what is this maximum limit for in the first place, and why do we have a maximum at all in the act.

The regular rule in workmen's compensation, not only here but in most acts, is that you pay two-thirds of average weekly wages, so you have a built-in maximum already. That holds the benefits down to a substantially lower figure than average wages.

So one may wonder, why do you have to have a maximum fixed in terms of so many dollars per week as an absolute limit. I think possibly the best way to illustrate why this is necessary is to recall the experience of one Western State which tried to get along without a maximum for a time. They discovered that western movies were being made on their premises, and once in a while a $6,000 a week movie heroine would fall off a horse and they suddenly discovered that they might be saddled with a bill for $4,000 weekly workmen's compensation benefits.

Now, obviously, you have to have some kind of a limit to take care of extreme situations like that. It is also true in many States that corporate executives and other high salaried officials of various kinds are under workmen's compensation. So it is perfectly proper to have some kind of maximum limit so that these unusually high salaried cases, and unusually high wages are taken care of.

But that does not mean that there was ever any intention that people who are making more or less average wages should be deprived of the full two-thirds benefits. So now that average wages in manufacturing throughout the whole country are standing at somewhere around $75 a week, it seems to me it is becoming very clear that workmen's compensation maximum limits of the order of $35 a week are just out of line with the basic purposes of the act.

Senator DOUGLAS. Senator Morse has come into the chamber. Would you be willing, Mr. Larson, to suspend for a moment so that he may testify on his bill?

Mr. LARSON. Certainly.

Senator DOUGLAS. Senator Morse, Secretary Larson has been very obliging by being willing to wait so that you may testify.

STATEMENT OF HON. WAYNE MORSE, UNITED STATES SENATOR FROM THE STATE OF OREGON

Senator MORSE. You are very kind, Mr. Secretary, and I appreciate it.

Mr. Chairman, I welcome the opportunity to testify in behalf of the Magnuson-Morse bill which is cosponsored by so many members of this committee.

The bill would amend the Longshoremen's and Harbor Workers' Compensation Act for the first time since 1946. It would do no more than bring the provisions of this historic law into line with other social-insurance programs. Nothing less would meet the needs of the longshore and harbor workers of the country.

It is very interesting, Mr. Chairman, to note that the time when we are really commemorating the hundredth anniversary of the birth of the great liberal from Wisconsin, Bob La Follette, that his early work in the field of seamen's legislation and longshoremen legislation was one of the great landmarks of his liberal legislative career.

Senator DOUGLAS. I think that was passed 40 years ago, in 1915.

Senator MORSE. That is right. I want to say that his liberality at that time was subject to the same type of criticism that probably will be directed against the liberality of the Magnuson-Morse bill. Yet the amounts that we are asking for, in my opinion, are little enough. The major difference that I have with the administration bill is that I think it is too little. They really ought to grant these workers the benefits that we are seeking to confer in the Magnuson-Morse bill, which in themselves are not too much.

In January I introduced S. 594, which had the same provisions as section 1 of this bill. It had the same cosponsors as well.

Section 1 would first increase minimum weekly benefits to $20. Second, it would increase maximum weekly benefits to $50. Third, it would reduce the qualifying period to 3 days. Fourth, it would reduce the period for obtaining full compensation from the date of injury to 14 days.

Subsequently, Senator Magnuson introduced a bill which had the same provisions as section 1, and in addition provided for increased compensation for loss of limbs. This new schedule of compensation would bring the Longshoremen's and Harbor Workers' Compensation Act into exact conformity with similar provisions of the Federal Employees' Compensation Act.

Senate bill 2280 is a combination of the Magnuson and Morse bills, and is sponsored by the original sponsors of both measures.

The Longshoremen's and Harbor Workers' Compensation Act was one of the first pieces of Federal social legislation which is based upon the philosophy of the earliest State legislation, the workmen's compensation laws. It was really fathered by Senator LaFollette, to whom I previously referred.

This historic program has proven its utility and worth over many decades. However, if it is to remain living legislation, it must keep pace with the increased cost of living since 1946, and the improvements of other similar legislation which, through a form of insurance, insulates individuals against loss of earnings and protects the community from the results of loss of earnings and earning power.

64677—55——2

Enactment of S. 2280 would fulfill the obligations of the Congress to those who work on the ships and docks of the United States. I am heartened that the committee is holding hearings on the Magnuson-Morse bill and recommend early and favorable action upon it.

I close, Mr. Chairman, by making reference to years of personal experience in this particular industry. I arbitrated the maritime disputes up and down the west coast for several years. They involved well over 100 major cases in that period of time. I think that part of the experience that probably had the greatest affect upon me was the part that had to deal with the injuries in this very hazardous occupation. The injuries are frequent and they are serious.

A good many of our arbitration awards were involved in the question of improving safety measures on the docks. But even with all of those safety measures, Mr. Chairman, the injuries are still very serious in the industry.

This 3-day provision of our bill, in my judgment, is required in the name of just being human. You are dealing here with a group of workers in American industry, few of whom have any reserve to fall back on. When they are injured they need financial assistance right then. In fact, from the standpoint of pure principle, it ought to start with the hour of the injury and not even 3 days afterward.

But for the administration to come along with a 7-day postponement, in my judgment is unconscionable. I sincerely hope that the committee will recognize the fairness and the human treatment that is proposed to be carried out by those 2 main provisions of the Magnuson-Morse bill, namely the $20 figure, and the reduction to a 3-day waiting period.

Senator DOUGLAS. And also the increase in the benefits for loss of limb and permanent injury.

Senator MORSE. Yes, but I am talking about just those two broad provisions in the bill, the reduction in the waiting period, and the increase in the weekly benefits, and the others go along with it.

If you have any questions I shall do my best to answer them.

Senator DOUGLAS. Thank you very much, Senator Morse.

Senator MORSE. Thank you very much.

STATEMENT OF HON. ARTHUR LARSON—(Resumed)

Senator DOUGLAS. Will you continue, please, Mr. Secretary.

Mr. LARSON. I was talking about the principal proposal involved in all of these bills, which is the increase of the maximum to $50. The increase proposed is identical in all of the bills that are before you. I had mentioned that with average wages in the country standing, in manufacturing, around $75 a week, it was pretty obvious that a maximum of $35 a week in benefits under a system that is supposed to pay two-thirds of wages is quite clearly out of line.

In fact, it has been estimated that because of these flat dollar limits, the average payment now is not two-thirds of average wage but more like one-third, which shows how far we have strayed from the original intention of workmen's compensation.

When this sort of thing happens, the result is that a lot of people are drawing benefits at the ceiling.

Now, many people do not realize that when you get your maximum fixed limit so low that a very large proportion of your people are

drawing the maximum, you have in effect changed the character of your system in the most fundamental way. The reason for that is this: The philosophy of our system is that it is an individualized system, in which individuals are paid in proportion to their previous earnings and standard of living.

Great Britain has since 1946 taken a different turn. Great Britain pays exactly the same benefit to everybody, no matter what his prior wages were. It is much simpler, but we do not in this country believe in doing it that way.

Senator DOUGLAS. As I remember the British system, it provided many years ago for workmen's contributions to the unemployment insurance funds. It was a contributory system.

Mr. LARSON. There have been times when it is contributory, and it is contributory now.

Senator DOUGLAS. I mean on workmen's compensation.

Mr. LARSON. Yes, that is right.

Senator DOUGLAS. They used to make a contribution, the employee as well as the employer.

Mr. LARSON. They still are contributory. It is interesting, incidentally, that even in England where everything has been put on an identical flat-rate basis, including old-age pensions, unemployment insurance, and disability, and all of the rest, that workmen's compensation has still been kept a little bit separate and you get quite a bit more for an industrial injury than for a nonindustrial injury.

Traditionally, the payments for workmen's compensation have always been higher than other income insurance systems. They have been two-thirds of average wage, while unemployment insurance is around half. They had to keep that in England, even when they tried to make a comprehensive system.

If we are going to pride ourselves on the individualized character of our system, we have to see to it that there is enough range and flexibility under this maximum limit so that we really do tailor people's benefits to their prior wages and standard of living. We do not do as they do in some foreign countries, go out and make surveys and see how many calories it takes for people to stay alive, and how much coal they have to use to keep warm in winter, and so forth, and then fix some flat figure and say that is what it is going to be for everybody.

We believe that we are dealing with individual human beings who have, through their own exertions, established individual earning levels, and that we should take into account that level when we set these figures.

There is another background fact I would like to throw in here, which should never be forgotten when we are talking about workmen's compensation. We are here dealing not with a Government grant, nor with a Government benefit, but we are dealing with a private right between private individuals, arranged by private employers and private employees, and backed by private insurance.

The right of workmen to be paid workmen's compensation is not something that has been granted to them by some beneficent government out of the goodness of its heart as a matter of grace. It is something which they obtained 40 or more years ago throughout the country for the most part by giving up their centuries-old common-

law right to bring damage suits for personal injuries against their employers.

The whole idea of workmen's compensation and the way it was sold in the first place to employers and employees and to the public was that it was a kind of quid pro quo. The employee gave up his right to sue his employer in case of negligence or fault and to recover large common law damage verdicts.

On the other hand, the employer also gave up something, and he gave up the right to be free from suits where no fault was involved. So he assumed absolute liability on a modest low scale of two-thirds of average wage, and the employee gave up his right to get big damage verdicts representing the entire amount of his damage. That was the understanding.

Senator DOUGLAS. Is it not true that there are two groups of workers, or two groups of unions which have refused to give up their rights and prefer to sue under employees liability, namely, the seamen and the operating crafts on the railways; is that not true?

Mr. LARSON. Yes, the railway workers are under the Federal Employers' Liability Act, which still is basically a suit based on negligence and fault, with certain presumptions and helps.

The interesting thing is that in recent years there have been some very large verdicts for people who have lost a leg or two legs. There have been at least 3 or 4 verdicts that I can remember in the last few years of between $200,000 and $250,000.

Now, if you think of it that way, this is the sort of thing that workers have given up in order to have the corresponding benefits of workmen's compensation. Although there have been quite a few people proposing that the railroad workers ought to be put under workmen's compensation, quite a fee of them for obvious reasons, because of these large verdicts, have now reached the point where they would rather stay under the Federal Employers' Liability Act.

So in damage suits, the employee recovers not two-thirds of his wage, but all of his lost wage, and also a lot of other things like pain and suffering and humiliation, loss of consortium, disfigurement, and all of these other things which can add up to these very large verdicts.

So then it should be emphasized that the workers who are asking for these increased benefits are not begging for some gratuity. They are asserting a right to be paid according to the original understanding that workmen's compensation would in the great bulk of cases restore two-thirds of average wage.

When it comes to the statistical basis for arriving at this figure, it is unfortunately not possible to present you with the kind of array of statistics that we would like to have. Ideally, I suppose that you should have an exact survey of the exact people covered by this act, but they are such a variety of people they do not fall into any standard statistical classification. It would be a job that has never been undertaken, to make a wage distribution for all of these people. It would take a very large special survey.

But there are a number of statistical indicators which make it very clear that $50 as a maximum is certainly no more than adequate; $35 cannot come anywhere close to permitting the bulk of the workers covered by this system to recover two-thirds of their average wages.

One of the clearest figures that we have is the most recent report from the Pacific Maritime Association Bulletin for April 1945, which

reports that the wages received by longshoremen on the west coast in April 1945 averaged $99.40 a week, or practically $100 a week. That is only the average.

Strictly speaking, when you are talking about setting a maximum, you probably shouldn't even compare it with an average, because you should cover the great bulk of people with your maximum.

So I think it is perfectly clear that on the west coast alone a maximum of $50 for people who are averaging $100 certainly cannot be excessive.

Senator DOUGLAS. I believe it is mathematically true that in most cases where you have an average, there are some that get more.

Mr. LARSON. There are about as many above it as below it.

Senator DOUGLAS. That is true.

Mr. LARSON. The District of Columbia is also directly affected by this action, and in the District on the basis of unemployment insurance data, which are reasonably indicative, it appears that the average wage in manufacturing in the district is $86 a week, and the average wage for all covered industries under unemployment insurance is $70 a week.

Senator DOUGLAS. Of course, manufacturing is a relatively minor occupation in the District.

Mr. LARSON. Yes, it would be. But for all of the covered industries, which would probably not been too far from the coverage of workmen's compensation—it is not identical by any means, but I think it is fairly indicative—it is now over $70 a week. That does not include Government workers, because they, of course, are not subject to workmen's compensation under this act.

From this it can be seen that both in the District and for the purpose of longshoremen, the maximum of $50 a week would certainly not be too much.

Senator DOUGLAS. Mr. Larson, in preparing for this hearing, I was somewhat struck with the fact that the official figures of your department for ranges in longshoremen industries were very scanty.

Mr. LARSON. As I say, it is not a standard classification.

Senator DOUGLAS. Do you have any plans for broadening the scope of your wage statistics for longshore workers?

Mr. LARSON. I do not think so. There is a classification, a statistical classification which is Social Security Board Classification 457, which is "services auxiliary to water transportation." That is the closest thing to this category that one could find.

Senator DOUGLAS. What does that show?

Mr. LARSON. That shows that the average wages in this category for the third quarter of 1954 for the country as a whole, was $63 a week.

Senator DOUGLAS. Now, those are actual earnings?

Mr. LARSON. That is right.

Senator DOUGLAS. Now, on the workmen's compensation, is it based on average actual earnings or on what would be the full-time earnings if a full working week were worked?

Mr. LARSON. It is generally pretty much actual earnings. There is some adjustment in some individual cases to bring it up to full-time earnings.

Senator DOUGLAS. There is a big difference, particularly in the longshore workers, between the two, because of the irregular nature of the employment.

Mr. LARSON. I do not think in the case of longshoremen that on the whole there would be any attempt to blow up a 30-hour week to a 40-hour week or whatever it may be.

Senator DOUGLAS. The question is when a worker on the docks or in the hold of a ship is injured and his case comes up under workmen's compensation, upon what is the award based? Is it what his previous earnings actually were, taking into consideration irregularity of employment, or what his earnings would have been on an average hourly rate multiplied by the number of hours which he is supposed to work during the week?

Mr. LARSON. If his employment were substantially less full than the average, then it might be brought up to the average. It would work this way: A person who has worked substantially the entire year would have his wages based upon his actual wages, and then if you had a person who worked substantially less than that during the week, his average weekly wage might be brought up to what the average for the whole industry is.

Senator DOUGLAS. I helped to draft the original Longshoremen's Act a good many years ago, but my memory is very faulty on this. Who administers the act, the Longshoremen's Act?

Mr. LARSON. The Department of Labor.

Senator DOUGLAS. You have your own examiners, do you?

Mr. LARSON. They are Deputy Commissioners in the major ports that are the administrators.

Senator DOUGLAS. Have you ever prepared a study of findings and awards of these administrators?

Mr. LARSON. On what basis? Do you mean the amounts?

Senator DOUGLAS. On the amounts and on the basis of compensation and what principles they follow in making their awards, as to whether they follow actual weekly earnings or average hourly earnings multiplied by the standard number of hours if the employee worked full time. There is a very great difference between those two, particularly in industries such as longshore where the work is very irregular.

Mr. LARSON. That is right in the act. The average wage formula is right in there.

Senator DOUGLAS. As I say, when we started we began very imperfectly on this, and I have not been able to keep up with the later provisions.

Mr. LARSON. I think this is substantially what would happen: If a man worked throughout the year—what is considered in that occupation as substantially full time on the average—then that would be his average wage.

Now, if, for example, as the usual thing is in the longshore industry, people do not work more in some ports than 30 hours a week, on the average, that would probably be the way it would come out.

Senator DOUGLAS. So if you work 20 hours, it would be brought up to a 30-hour week, but not to a 40-hour week?

Mr. LARSON. It might. It might be brought up.

Senator DOUGLAS. That term "might" offers a wide opportunity for difference. You say it might be brought up. I would like to see the actual awards studied and see what does happen. Have you ever had such a study as that made?

Mr. LARSON. I do not suppose we ever studied that. I might ask Mr. Driscoll, who is our man in the Department of Labor who is in charge of the Longshoremen's Act, if he could add to this.

Senator DOUGLAS. Would you identify yourself for the record, please?

Mr. DRISCOLL. W. D. Driscoll, Deputy Director, Bureau of Employees' Compensation, in charge of longshore operations.

Mr. LARSON. I could read you the wage formula which I have been trying to summarize. This is section 10:

> If the injured employee shall have worked in the employment in which he was working at the time of the injury, whether for the same or another employer, during substantially the whole of the year immediately preceding his injury, then his average annual earnings shall consist of 300 times the average daily wage or salary for a 6-day worker, and 260 times the average daily wage or salary for a 5-day worker, which he shall have earned in such employment during the days when so employed.

Senator DOUGLAS. How do you interpret "average daily wage"?

Mr. DRISCOLL. The Deputy Commissioner usually makes the determination at the time of the injury, and on the evidence that is produced by him from the payrolls of the employer. He makes that determination.

If a man is working steady, we have no difficulty in determining what the average wage is. If it is irregular we have a formula. There are three other provisions. If he works a whole year his wage shall consist of 300 times the average daily wage for a 6-day worker, if a man works for 5 days, we multiply by 260, times the daily wage.

Senator DOUGLAS. Is it actual hourly earnings?

Mr. DRISCOLL. Yes.

Senator DOUGLAS. Multiplied by the number of hours to get the day's wage?

Mr. DRISCOLL. That is right.

Senator DOUGLAS. For a 6-day worker, you get a yearly wage by multiplying by 300, or for a weekly worker, by 6?

Mr. DRISCOLL. It would be 260 times for a 5-day worker.

Senator DOUGLAS. Most of these benefits are in terms of a weekly wage, and not in terms of an annual wage, and so you multiply the daily wage by 6, and by 5, respectively?

Mr. DRISCOLL. That is right.

Senator DOUGLAS. And the daily wage is the actual average hourly earnings multiplied by the number of hours in the day?

Mr. DRISCOLL. At the time of the injury, yes, sir.

Senator DOUGLAS. How do you find out his average hourly earnings?

Mr. DRISCOLL. We obtain that from the records of the employer, sir.

Senator DOUGLAS. In the period immediately preceding the injury?

Mr. DRISCOLL. Yes.

Senator DOUGLAS. In other words, what you do is take what the full-time earnings would be, and not what his actual earnings were?

Mr. DRISCOLL. There are variations to it, sir, because there are times when it is almost impossible to determine what the average earnings annually would be, and in such cases we have a provision of the act that covers that. I would be glad to read it.

Senator DOUGLAS. Let us go back to this average daily wage which is the basis upon which you build that up. Suppose a man has a rate of $1.50 and he worked 8 hours in a day. He would get $12 a day. But in practice, he only works 4 hours a day. Now, what is the average daily wage that you take? Is it $12 or $6?

Mr. DRISCOLL. $6. If it is actual earnings.

Senator DOUGLAS. You do not build him up to full-time within the day?

Mr. DRISCOLL. No, sir. It is the actual earning, whether $4 or $12 a day over the number of days he works.

Senator DOUGLAS. That makes quite a difference. It makes it appreciably less than what full-time earnings would be.

Mr. DRISCOLL. That is right.

Senator DOUGLAS. Thank you.

Mr. LARSON. There is another way to go at this question of how much the increase should be, or whether an increase is needed. That is to compare the ratio of maximum benefits to the average wages that prevailed in 1948 when the $35 maximum was set.

Now, this figure I was giving you a few moments ago, based on the category of services auxiliary to water transportation, is the best comparison at hand. The third quarter of 1948, the average wage was $45, and the third quarter of 1954, it was $63, which means an increase of 40 percent.

Taking the same comparison for private employees in the District of Columbia, we find that the increase has been about 37 percent. So this means that the establishment of the $50 minimum now would approximately restore the ratio existing in 1948. The increase from $35 to $50 represents an increase of 42.9 percent. But it must be remembered that this stops at the third quarter of 1954, while the wages that will be in effect at the effective date of this action would be somewhat higher.

This kind of comparison assumes that $35 was adequate in 1948, which may very well be questioned. But in any event, at the very least, it shows that an increase to $50 is necessary to keep us from losing ground.

It might be argued that the $50 maximum will bring the Longshoremen's Act up above most work compensation acts, and that is true in terms of the size of the maximum. There are only a couple of other acts that set the maximum higher than this.

Senator DOUGLAS. What are those States? In the old days Wisconsin used to set the pace.

Mr. LARSON. It is Arizona, which has a $150 maximum a week. The Federal act, which is not strictly comparable, is $121.50, I think. That is the maximum.

Senator DOUGLAS. You mean on this one item?

Mr. LARSON. The Federal Employee's Compensation Act sets that maximum. The Alaska Act this year, I believe, put the maximum up to $100. Hawaii raised its maximum this year also to something in this range.

Senator DOUGLAS. Wisconsin, I notice, is $42.

Mr. LARSON. Yes. Oregon under some circumstances pays as much as $50 or over, depending upon the number of dependents. But Oregon is a rather special case because it does not base its benefits as other acts do on a direct comparison with prior earnings, but is more concerned with the number of dependents.

Senator DOUGLAS. Oregon is closer to the British law?

Mr. LARSON. That is correct.

Senator DOUGLAS. And Oregon has a contribution by the worker of 1 cent a day, I think.

Mr. LARSON. That is right. But although this would set a maximum which is somewhat higher than most of the State acts, I do not

think that is any excuse for failing to take action which is so clearly demanded by the level of wages involved, and by the purpose and function of the statute.

In fact, I think the Federal Government should not hesitate to take the lead in restoring this principle that there should be this two-thirds relation between benefits and average wages. In so doing, it may aid not only these 600,000 workers directly affected, but it may indirectly contribute to the raising of standards for millions of workers.

Senator DOUGLAS. I am happy to know all of the bills agree on this point.

Mr. LARSON. This is something that all of the bills agree on; yes.

The next proposal that I would like to talk about is the one that has to do with improving rehabilitation activities. There is a so-called special fund set up by section 44 of the Longshoremen's Act, which is similar to the so-called second injury funds in most workmen's compensation acts. Again we should remember that this fund is not federally appropriated money.

The way this fund is built up is something like this: When a person dies of an industrial injury, without dependents, apparently it was thought that there might be a kind of windfall to the insurance carrier. Here is a serious injury and death and just because there were not any dependents, it does not cost the employer, or the carrier anything except possibly funeral expenses.

So it was apparently thought that the carrier should not object too much if a nominal payment such as $1,000 were made in cases of that kind, and this sum is taken and put into the special fund. It has been used for two specific purposes that are set out in the act, and cannot be used for anything else.

The principal purpose is the second injury fund purpose. I might just explain very quickly what that is. Suppose a man loses one eye, and he has already lost one eye before he goes to work. Now, if he goes to work for an employer and loses the other eye, under most compensation acts the employer is liable for total blindness, while if the man had been whole when he came and one eye had been lost, the liability of the employer would have been a great deal less.

Well, that being so, you can see the consequence. Nobody would hire a one-eyed man, or a one-armed man, because if he lost the other member there was this tremendously increased liability. This was a severe handicap to the employment of physically handicapped people.

So this ingenious device of the second injury fund was invented, under which the special fund pays the difference between what it would have cost if the man had been whole, and what it would cost in these circumstances. That is what this fund has been used for.

There is some provision, also, for using some of this fund in a very limited way for rehabilitation activities. But the disbursements from this special fund have been absorbing less than $10,000 a year on the average, while contributions have been going into the fund at 3½ times that rate. The result is that there has now piled up $734,000 in the fund.

The present proposal is to permit the utilization of some of this fund for greater rehabilitation activities on behalf of injured workers. Anyone who has followed workmen's compensation in recent years is aware of the fact that there is a tremendous upsurge of interest in promoting rehabilitation of the industrially disabled worker.

I have heard a representative of one of the largest insurance carriers in this country going up and down the country preaching the doctrine that as a matter of cold dollars and cents, the best thing that anybody can do is to spend money freely on rehabilitating disabled workers.

If you can put a man back on the job who has been bedridden, and who has required attendants, and who has been helpless, you not only save all of the attendants, you save the medical bills and all of the rest. And he actually begins to earn money and he begins to pay income taxes. It is perfectly possible to prove that you get several dollars back one way or another for every dollar you put into rehabilitation.

We would like to do everything we can under this act to help further that program. Great strides have been made in rehabilitation techniques as a result of things learned during the war, both the physical rehabilitation and the vocational rehabilitation technique.

Of course, as you know, the Vocational Rehabilitation Act of 1954 permitted considerable expansion of rehabilitation activity, and those services will be available to the majority of people covered by this act. But there is a great deal that we have to do within the framework of the workmen's compensation system to support and supplement this whole rehabilitation process.

For example, we propose to increase the maintenance allowance that is provided while rehabilitation is going on from the present maximum of $10 a week to $25 a week. Then we are also asking for permission to obtain amounts from this special fund as authorized by Congress in annual appropriations for the department to defray the administrative cost in making arrangements for special rehabilitation cases when for some reason or other adequate relief would not be available under the Vocational Rehabilitation Act of 1954.

This might happen in various kinds of emergencies, or when local rehabilitation funds are exhausted, or for various technical reasons pertaining to the particular individual.

We also need to step up another kind of activity which may seem a little bit surprising at first, but it is extraordinary how many times the disabled man is not interested in rehabilitation, or is even antagonistic to it. It is not so surprising when you study this problem, but it sometimes takes a great deal of patience and careful understanding and work to get the proper mental attitude to lay the groundwork for successful rehabilitation.

We want to use some of these funds for our own activities in preparing employees to undertake rehabilitation treatment. We think this is just about the finest thing that we could do to improve compensation administration.

Of course, it is impossible to measure the benefit to the rehabilitated man himself in terms of the restoration of his self-respect and of his status in the community, and of his personal happiness and earning power. Beyond the gain to the community and the country of getting a skilled and experienced workman back—as I said before—the cold-blooded payment of income taxes alone will more than justify this kind of expense.

The third item has to do with the change in the minimum benefits, and at this point we encounter a slight difference of opinion between the bills that are before you. S. 1307 proposes to increase the minimum from its present $12 a week to $15 a week. The other bills would put it up to $20 a week.

I would like to say at the outset of this discussion of the minimum that I hope that this little difference about setting the minimum will not be allowed to detract from the overwhelming importance of raising the maximum from $35 to $50. The two problems are entirely different in terms of importance, and in terms of cost, and in terms of function. It should not be assumed that when the maximum is increased that the minimum has to follow right in its footsteps. The functions of the maximum figure and of the minimum figure is entirely different, and the effects are entirely different.

The function of the maximum figure, as I have indicated, is to make is impossible for some people to receive two-thirds of actual earnings, while the effect of setting a dollar minimum is to force the payment to some people of much more than two-thirds of average weekly wage.

So this leads us into a very delicate question, but one I am not going to sidestep or ignore. That is the basic problem here and in all of income insurance of getting benefits too close to actual prior wages.

In the overwhelming majority of cases, whether workmen's compensation, or unemployment insurance, or temporary disability insurance, or any other public program, there is a very definite built-in protection against those very rare cases in which somebody might be tempted to feign unemployment or disability in order to collect benefits when he ought to be at work.

It is a very unusual person, indeed, who would prefer to live on one-half of his accustomed earnings in order to have his leisure, when he could be at work and drawing full pay. I think that is something that people have frequently lost sight of, when they talk about the possibility of improper payments and frequent vacations, and so forth in these systems.

It is a very unusual person. He gets used to an accustomed standard of living, and he has his rate of expenditure, and he has is mortgages and payments to keep up. And it is almost inconceivable that a man will prefer to take half of his wages just in order to have some time off.

But if your benefits are 100 percent of your average wage, or almost 100 percent, when you are away from work for reasons of disability or unemployment, then I think we have to admit that you put a considerable strain upon human nature if you expect that there would not be an individual here and there who would be tempted to live on his benefits rather than to go back to work.

I think that in any of these systems you always have to keep watch out for that danger. The only time this can happen under a workmen's compensation system ordinarily is when this flat dollar minimum takes over. For example, if the minimum is set at $20 a week, and if the injured claimant is a man who has been earning average wages at $20 a week, it means that he will be paid exactly the same during his period of disability as he was paid when he was at work.

Now, of course, you are going to have this same problem in greater or lesser degree no matter where the minimum is fixed. It could happen under a $15 minimum. If you were dealing with a man whose average earnings were $15, that would be true.

But the point is that the higher you set this minimum the more you increase, at a rapidly increasing rate, the chances that this sort of danger will be encountered.

We feel that particularly because of the very wide range of geographical areas involved here, and the very wide range of wage patterns, that we have to take that into account, and that it would be better to put the minimum only up to $15 from the present $12, rather than all of the way up to $20. After all, this act has to be right in Seattle, and it has to be right in Biloxi, and Galveston, and New Orleans, and all of the ports of the country.

Senator DOUGLAS. Have you finished your discussion of the question of the minimum?

Mr. LARSON. I have a little more on this point, Senator. I was going to say that there is really no absolute standards on this minimum. It is a very tricky question. For example, when you are dealing with longshoremen and harbor workers, somebody will obviously ask, "How in the world can you worry about a $15 or $12 minimum when you are dealing with longshoremen, who average $100 a week on the west coast, and who average certainly several times this much? How does it happen that you have to have a minimum like this at all?" There are ways it might come about.

I think it is usually a situation in which the person was not fully relying on these earnings for his living. You may have a part-time worker, and you might have a man who is only partially attached to the labor force, and you may have people that come down for a weekend or a couple of days a week.

Senator DOUGLAS. The testimony of Mr. Driscoll has brought out the fact that it is only a short time within the day which is taken into consideration in getting the actual earnings. That is the failure to get a full number of days in a week is not taken into consideration in the fixation of the compensation.

Mr. LARSON. You see, if you will remember the formula, to get the full compensation, if you are a 6-day worker your average wage is calculated on that basis. If you are a 5-day worker it is calculated on that basis. But if you are a 1-day worker, it would not be either one of those. You would not expect, of course, a man who works in a different occupation all week long and then goes down on Saturday and works 1 day—obviously he would not have his wages extended out to that.

Senator DOUGLAS. We will come back to this, because this is a very important point. Would you come back to the stand, Mr. Driscoll?

Mr. LARSON. This involves several stages to this formula. This would be in the last one which is the catchall phase which takes care of all other cases.

Mr. DRISCOLL. In answer to your question, sir, you are in the category we call section 10 (c) and (d). They read as follows:

(c) If either of the foregoing methods of arriving at the average annual earnings of the injured employee cannot reasonably and fairly be applied, such average annual earnings shall be such sum as, having regard to the previous earnings of the injured employee in the employment in which he was working at the time of the injury, and of other employees of the same or most similar class working in the same or most similar employment in the same or neighboring locality, or other employment of such employee, including the reasonable value of the services of the employee if engaged in self-employment, shall reasonably represent the annual earning capacity of the injured employee.

And (d) is this:

(d) The average weekly wages of an employee shall be one fifty-second part of his average annual earnings.

Senator DOUGLAS. I will give a highly polished winesap apple to anyone who will tell me what (c) means.

Mr. LARSON. I would be very glad to, if I may. It is a catchall formula.

Senator DOUGLAS. Do not go away, Mr. Driscoll, there is more coming.

Mr. LARSON. It is a catchall formula to take care of any kind of case that does not fit into the more standard pattern of employment represented.

Senator DOUGLAS. Does it mean you can use your discretion and do anything you want to?

Mr. LARSON. It is not quite as broad as that. It takes care of all sorts of odd cases. That is, where you do not have regular employment. Suppose, for example, that you had a man who was just hired this morning, and he is injured within 5 minutes. What are you going to do about him? The whole pattern of his employment has not been established at all. You have to have some kind of formula to take care of that man.

This type of provision is very common. This exists in many other statutes, and it has been interpreted many, many times over, and there are many cases giving guidance on how to apply this formula.

Senator DOUGLAS. What you are chiefly afraid of is the earnings in the gulf ports?

Mr. LARSON. That is just one of the things that come to mind in this, that when you set a minimum you have to think of the entire range of wage levels throughout the country.

Senator DOUGLAS. You stated that on the west coast the earnings were $100; is that not true?

Mr. LARSON. That is true.

Senator DOUGLAS. And on the east coast, is that true?

Mr. LARSON. The average in Massachusetts is $43.

Senator DOUGLAS. And in the gulf?

Mr. LARSON. I do not have the gulf figures. I am not trying to give you any scientific formula for setting this minimum.

Senator DOUGLAS. What I am trying to say is that a person would have to be employed very irregularly to get less than $30 a week; and on a $30-a-week basis, the $20 minimum would be the two-thirds standard for which you have been making a very eloquent plea.

On the other hand, your $15 minimum would mean that it would be held to $22.50.

Mr. LARSON. The only way this could come about would have to be very definitely part-time employment. I do not know any place where full-time employment in the occupations we are talking about would produce anything that would be affected by this minimum.

Senator DOUGLAS. Part-time employment is of two types, failure to get a full day's work, and then failure to get 5 or 6 days' work per week.

Mr. LARSON. It would have to be a part-time employment of a kind which is so unusual that it is not even characteristic of this industry, where we all realize there is a lot of irregularity of employ-

ment. I think we should keep in mind, too, the fact that this minimum does not apply if the actual earnings were less.

For example, if a man earned $9 a week on the average, he is not going to get the $12, he is going to get $9, because the actual earnings, if less, are paid.

Senator DOUGLAS. That would be true under the Magnuson-Morse bill, too.

Mr. LARSON. That is correct. For that reason I do not think that this can be judged by saying that it looks as though $15 is a pretty low figure to throw at a workman and it would not support this or that standard of living, and so forth. This is one case where you just cannot go at it that way. Logically, then, you would have to go on and say, "Well, here is a man earning $9 or $5 a week."

Senator DOUGLAS. What are the hourly rates now in the gulf, New Orleans, for example?

Mr. LARSON. Here are a few figures. In New Orleans $55.52 a week, average weekly earnings. In Galveston, $55 is the average weekly earnings. In Norfolk, $45 is the average weekly earning. In Jacksonville, $45 to $75 would be the average.

Senator DOUGLAS. That takes in all of your short-time workers, does it not? They are included in that average, are they not?

Mr. LARSON. This is average weekly earnings, yes.

Senator DOUGLAS. It includes the short-time workers, which would mean those who have comparatively full employment would earn appreciably more?

Mr. LARSON. Oh, yes.

Senator DOUGLAS. Even in the gulf. Do you really think that there are many who are below this figure?

Mr. LARSON. There are very few people who are affected by this minimum, and that is why I said at the outset this is a relatively insignificant part of this whole question. I would not want this difference on it to obscure the important points involved here.

Senator DOUGLAS. You would not fight, plead, and die for $15.

Mr. LARSON. That is the way I feel about it.

Senator DOUGLAS. I would like to put in the record a letter from the then Secretary of Labor, May 9, 1953, in response to an identical bill of Senator Morse introduced February 20 of that year, S. 1054 of the 83d Congress, in which the Secretary of Labor stated:

> Further, the bill would increase the maximum compensation for disability from $35 to $50 a week and the minimum compensation for total disability from $12 to $20 a week.

In the letter he goes on to say:

> The other liberalizations of the bill relate to the increase in the minimum weekly benefit, to a reduction in the waiting period before compensation may be drawn, and to a reduction in the period of disability necessary to collect compensation retroactively for the waiting period. These liberalizations reflect the tendencies toward improvement now being followed in workmen's compensation laws in the States.

In general, I do not think I am forcing this letter at all when I say that the letter of the then Secretary of Labor seems to indicate approval of this increase from $12 to $20. That is signed by Martin P. Durkin.

(The letter referred to follows:)

UNITED STATES DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, May 8, 1953.

Hon. H. ALEXANDER SMITH,
Chairman, Committee on Labor and Public Welfare,
United States Senate, Washington 25, D. C.

DEAR SENATOR SMITH: This is in reply to your request for my comments on S. 1054, a bill to amend section 6 of the Longshoremen's and Harbor Workers' Compensation Act so as to provide increased benefits in cases of disabling injuries, and for other purposes.

This proposal would amend the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1427, as amended) by reducing the waiting period for compensation benefits from 7 to 3 days. The waiting period would be eliminated where the disability continues for more than 14 days, instead of for more than 49 days as the statute presently provides. Further, the bill would increase the maximum compensation for disability from $35 to $50 a week and the minimum compensation to total disability from $12 to $20 a week. It would continue the present provision that the average weekly wage shall constitute the weekly compensation where such wage is less than the specified minimum.

The major benefit resulting from the enactment of S. 1054 would be the raising of the maximum weekly compensation limit. The present limit on compensation of $35 a week was established when the Longshoremen's and Harbor Workers' Compensation Act was amended in 1948. This limit is outmoded in relation both to current wage rates in the industry and to the present day cost of living.

The Senate Committee on Labor and Public Welfare stated in its report on proposed amendments to the Longshoremen's and Harbor Workers' Compensation Act in 1948 (S. Rept. 1315, 80th Cong., 2d sess.) that the rates for longshoremen averaged $1.75 an hour in 1947. The files of the Bureau of Labor Statistics show the basic straight-time rate for longshoremen on the Pacific coast at the present time to be $2.10 an hour and on the Atlantic coast to be $2.27 an hour. While wage rates have increased, the cost of living has also advanced. The Consumer Price Index average for 1947 was 95.5. In February of 1953 it was 113.4, reflecting an increase of 18.7 percent over 1947.

The other liberalizations of the bill relate to the increase in the minimum weekly benefit, to a reduction in the waiting period before compensation may be drawn, and to a reduction in the period of disability necessary to collect compensation retroactively for the waiting period. These liberalizations reflect the tendencies toward improvement now being followed in workmen's compensation laws in the States.

As of January 1, 1953, 17 State laws set a minimum for temporary total disability higher than the $12 now provided in the Longshoremen's and Harbor Workers' Compensation Act. The laws in 16 States and 3 Territories impose a waiting period less than the 7 days required under the Longshoremen's and Harbor Workers' Compensation Act, and 9 States have a waiting period of 3 days, as S. 1054 proposes. With reference to the duration of disability, 11 States have a period of 2 weeks or less before compensation may be retroactively drawn for the waiting period. Further details of the provisions of State laws are contained in the pamphlet which I am attaching, together with a notation indicating the pages on which material pertinent to this proposal appears.

The enactment of the proposal, in my opinion, would result in greatly needed improvements in the Longshoremen's and Harbor Workers' Compensation Act. For this reason, I urge the favorable consideration of S. 1054.

I recommend, however, that a further amendment be made in the act to raise the limits of death benefits in the same manner as is now proposed with respect to disability benefits. To accomplish this result I recommend that subsection 9 (e) of the Longshoremen's and Harbor Workers' Compensation Act, pertaining to the computation of death benefits be amended by substituting "75" for "52.20" and "30" for "18."

As you know, amendment of the Longshoremen's and Harbor Workers' Compensation Act would automatically affect benefits under the District of Columbia Workmen's Compensation Law (45 Stat. 600) and the committee will, of course, desire to give consideration to the effect of the proposal in the District of Columbia.

It is estimated that no additional administrative cost would result to the Government from the enactment of S. 1054. There is, however, the possibility that additional indemnity cost might accrue through the payment of compensation for injuries to Government contractors' employees under the so-called War Hazards Act (62 Stat. 602, as amended). Benefits under this act for war-risk

hazards of certain contractors' employees working outside of the United States are paid by the Federal Government and are measured by the Longshoremen's and Harbor Workers' Compensation Act. It is not possible, of course, to estimate future war-risk hazard liability.

The Bureau of the Budget advises that it has no objection to the submission of this report.

Yours very truly,

MARTIN P. DURKIN,
Secretary of Labor.

Also, we have a letter from Mr. Dodge, then Director of the Budget, which states:

The Secretary of Labor, in his report to your committee on this bill, recommends its enactment—

and he concludes—

This office would have no objection to the enactment of this measure.

(The letter referred to follows:)

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington 25, D. C., May 25, 1953.

Hon. H. ALEXANDER SMITH,
Chairman, Committee on Labor and Public Welfare,
Washington 25, D. C.

MY DEAR MR. CHAIRMAN: This is in reply to your letter of February 21, 1953, requesting the views of this office with respect to S. 1054, a bill "To amend section 6 of the Longshoremen's and Harbor Workers' Compensation Act so as to provide increased benefits in cases of disabling injuries, and for other purposes."

This bill would amend the Longshoremen's and Harbor Workers' Compensation Act by reducing the waiting period for compensation benefits from 7 to 3 days. The waiting period would be eliminated where the disability continues for more than 14 days, instead of for more than 49 days as the statute presently provides. The bill would also increase the maximum and minimum compensation for disability from $35 to $50 and $12 to $20 a week, respectively. It would continue the present provision that the average weekly wage shall constitute the weekly compensation for total disability where such wage is under $20.

The maximum and minimum compensation rates now in effect were enacted on June 24, 1948. Since then there has been a rise in the cost of living and benefits have been raised in the compensation laws of many States and in the Federal Employees' Compensation Act. Some adjustment in the benefits under the Longshoremen's and Harbor Workers' Compensation Act therefore appears appropriate.

The Secretary of Labor, in his report to your committee on this bill, recommends its enactment with a suggested further amendment to subsection 9 (e), the effect of which would be to maintain the present comparability in the computation of both disability and death benefits. If rates for disability are to be adjusted, it would appear appropriate to also adjust rates for death benefits so as to continue the existing relationships between the two rates of compensation.

This office would have no objection to the enactment of this measure.

Sincerely yours,

JOSEPH M. DODGE,
Director.

Senator DOUGLAS. Do you now object to increasing the minimum to $20?

Mr. LARSON. Well, this proposal, both in this respect and in respect to the waiting period which I will take up next, represents an effort on my part to apply what I think is sound and scientific workmen's compensation standards.

I do not think anybody in this country has tried harder than I have to get workmen's compensation standards improved. But I think that there are certain principles and there are certain scientific lessons that we have learned about workmen's compensation that should be observed in little details like this.

For that reason I think it would be safer to set the figure at $15 a week, which is an improvement over the $12 a week, because of the peculiar nature of this act, and the wide range of areas that it has to cover, and the possible dangers you might run by putting that figure higher.

One comparison that comes to mind is this, when considering what $15 will do; I just noticed yesterday the figures came out from social security that the average retirement pension being paid under social security is exactly this, $15 a week. This, of course, is not a particularly relevant comparison, but one that I just happened to notice yesterday.

That is the story on the setting of the minimum. It is not going to make too much difference one way or the other in terms of cost, but in terms of preserving the soundness of the system, and saving it from some discredit which might result if the amount of temptation I referred to should be increased as a result of that, I think it deserves careful thought.

Now, on the waiting period, again there is a difference between the bills. S. 1646 and S. 594, and S. 2208 reduce the initial waiting period before compensation may be drawn from 7 to 3 days. The Department of Labor's bills have not proposed any such reduction.

At first glance this might seem like a very attractive and appealing move. It would afford benefits to a lot more people, and, therefore, it usually has an instantaneous appeal for those who have the interest of the injured workman at heart. For that reason it may seem a little surprising that some of us who are constantly working toward better workmen's compensation standards for injured workmen are not inclined to go along with this proposal.

I would like to explain why that is. We think on balance that the real interests of injured workmen will be better served by leaving the waiting period where it is. Once more I would like to go back and review the basic philosophy about income insurance in this country. There was a time sometime ago when the overwhelming majority of Americans believed that it was the duty of every man to save his money against a rainy day and provide for his own security.

Then we went through the great depression, and people's savings were wiped out. We were taught that private savings alone were not sufficient against the major exigencies of life which stopped earnings. So most people now accept the principle of income insurance which is represented by workmen's compensation, unemployment insurance, and the rest.

But the fact that we have accepted these systems should not necessarily mean that we now go completely overboard to the other side and say we do not expect people to have any savings or any responsibility for taking care of even the most trivial emergency. I think it would be a very sad day for this country if we ever got the idea that people can now completely abdicate to the Government, and to these various income-insurance systems the whole job of preparing against various kinds of contingencies.

So in most income-insurance systems, including unemployment insurance as you know, the assumption has always been that the average person can at least see himself through 1 week of wage loss. So the idea of a 1-week waiting period is that personal thrift or other

resources, and so on, can at least be relied on to carry a man over a period of wage loss which might amount to say $50 or $75.

Senator DOUGLAS. Is there a difference between protection against unemployment and protection against income lost through accidents?

Unemployment and the pain suffered by a worker thrown out of work is psychic and hard to measure, and partially it is compensated for by protection of income. In the case of injury, there is physical pain which cannot be compensated for. Therefore, I wonder about that. I have been opposed to reducing the waiting period of unemployment insurance, but I am wondering, in the case of accidents, if there is not a case for better treatment here just as there is in the percentage of benefits.

If a man loses an arm or suffers an injury, even with the improvement in modern medicine which diminishes the pain, a man has physical suffering. I do not think that he can be treated purely in income terms.

Mr. LARSON. Of course, he also gets his medical expenses and hospital expenses, and so forth.

Senator DOUGLAS. What I am trying to say is that money is not necessarily full compensation. The worker not only can suffer loss of income but he suffers pain.

Mr. LARSON. Of course, it is elementary in the law of workmen's compensation that there is no payment for pain nor suffering.

Senator DOUGLAS. But does it not follow that we cannot pretend to be ignorant of what we know does occur; namely, that there is pain. Therefore, is it not proper to adjust the benefits to take care of a known fact?

Mr. LARSON. In this original quid pro quo that I mentioned, you see, the injured worker gave up his right to sue for pain and suffering, which is one of the elements of a typical damage suit. He agreed to accept medical care, hospital care, and income, and in fact only a a portion of income loss. He gave up his right to sue for pain and suffering which is sometimes worth many thousands of dollars.

So it may be in various imperceptible or subtle ways, including the fact that he gets two-thirds of his wages, where the unemployed man gets one-half, and so forth, that all of these things are taken into account in treating him better than people under different systems.

Senator DOUGLAS. That is just the point.

As guardians of his interest, we should see to it that he is not shortchanged for giving up this right. I want to commend you for wanting to increase the maximum to make it more closely conform to the two-thirds standard. But that same consideration and the same principle would hold in diminishing the waiting period under identically the same principle.

Mr. LARSON. I think it depends on what you set out to insure. This is an insurance system. In an insurance system ultimately you get what you pay for.

The question is: Should insurance be applied to relatively small amounts?

Now, we do not set out and insure a $50 bicycle because we can take the loss of a $50 bicycle in our stride, probably. But if we have a $2,500 car, we insure the car. We insure losses which we cannot take in our stride. That is the function of insurance.

There is a loading charge on insurance and there are all sorts of administrative expenses. It does not pay to start the wheels of insurance in motion to take care of losses of $15, $20, $30, or $50.

Senator DOUGLAS. Mr. Larson, I know that you are not a hard-hearted man, quite to the contrary, and I am not trying to make you such; but both of us get comfortable salaries. It is easy enough for us to say that 4 days does not matter in this and it is just an administrative encumbrance.

But to an unskilled worker, with a large family, that 4 days' pay may amount to $40, and that is a very appreciable factor. Probably it would average $40.

I do not know about the medical benefits. It has been many years since I kept up to date on workmen's compensation, but in the old days medical benefits were grossly inadequate.

Mr. LARSON. Under this act they are reasonably complete, now.

Senator DOUGLAS. I have never known a benefit yet that would be complete.

Mr. LARSON. They are supposed to be unlimited.

Senator DOUGLAS. Will you proceed, then?

Mr. LARSON. I think, really, the way I feel about this is to just assume that you have a certain amount to expend on workmen's compensation benefits. I can think of other places I would rather spend it where real tragedies would be averted and where real hardship would be taken care of, rather than going into the administrative complexities of handling hundreds and thousands of very small claims to put $15 or $30 or $50 into the pockets of people who could probably get through that period. That is my general feeling about it.

There is another detail in this waiting period section which probably should be mentioned; that is, the other period which is the period after which you reach back and get paid for the waiting period. It is now 7 weeks, which is much too long. In other words, now, if you go through the 7-day waiting period, then your disability persists for 7 weeks, the system reaches back and pays you for the first week. On the other hand, we are inclined to think again, although this is not a terribly scientific judgment, that the 14-day period proposed in S. 594 and S. 1646, and the new bill, is possibly a bit too short.

About the only thing that is at stake here is this: Suppose you had a waiting period of 7 days, and this period is set at 14 days, and a man has been laid up for 10 days. If his disability can be extended to 14 days, he gains not 4 days, but 11 days. There is a big premium on lasting out the 14 days. We think that it would be a little safer to have that figure at 28 days. But that, too, is a comparatively minor point.

Now there are 1 or 2 miscellaneous changes. S. 1307 at the end contains a section which concerns the effect on the War Hazards Act of proposed increases in the benefits under the Longshoremen's Act. This is the only instance I know of in which ever future adjustment in benefits is retroactively applied to everybody who is drawing benefits under the system. There are many, many other systems in which this is not true, and it is questionable whether this group should be continued to be singled out for this very special preferential treatment. So we are recommending that this practice be discontinued as to this group.

Senator DOUGLAS. What groups would fall under this War Hazards Act?

Mr. LARSON. These would be employees of Government contractors outside of the continental United States who have been injured as a result of war hazards. These would be mostly existing past cases. They were one of the special groups that have been tacked onto this act and whose benefits were keyed in with this act.

Senator DOUGLAS. Employees on Wake Island, and so forth?

Mr. LARSON. I would say so; yes.

Senator DOUGLAS. What are you proposing in connection with that?

Mr. LARSON. Well, the act, as it stands, says that every time in the future there is a change in benefits, everybody who is drawing benefits under this system gets the benefits of that increase. So far as I know, that is the only instance of that kind under any such system as this. It does seem to be a rather unique and preferential treatment for this group.

Senator DOUGLAS. What about those now drawing benefits?

Mr. LARSON. That is the ones that we are referring to.

Senator DOUGLAS. They would go up?

Mr. LARSON. Under the law as it now stands, they go up every time the thing is changed.

Senator DOUGLAS. What about longshoremen who suffered a permanent or partial injury or death under the preceding law and the preceding scale of benefits? Would they be entitled to an increase under the revisions?

Mr. LARSON. That would ordinarily never happen under any workmen's compensation act.

Senator DOUGLAS. They pay would not be increased?

Mr. LARSON. No. Your award is made once and for all at the time the award is made and subsequent increases do not affect your scale of benefits.

Senator DOUGLAS. You are trying to place the war hazards group under the same treatment and give to neither one of them retroactive increases in pay?

Mr. LARSON. That is right.

Senator DOUGLAS. In benefits?

Mr. LARSON. That is true.

I have just one more change to mention here. That is another use to be made of the special fund that I referred to earlier. This is in S. 1308.

Once in a great while it may happen that because of the insolvency of an employer or a carrier, perhaps, claims simply cannot be paid. This happens very seldom because we have very strict requirements about security for workmen's compensation. But of course when that does happen, it is a very tragic situation, indeed.

Senator DOUGLAS. Is it compulsory upon the employer to insure?

Mr. LARSON. Or qualify as a self-insurer; yes.

So in that very rare case where there is a failure of payment, because of some financial insolvency or breakdown, we are proposing that this fund should pick up the liability and pay it. Then, of course, we would have the right to go against the employer and get anything back that we could to reimburse ourselves.

Those, then, are the changes that are involved in this set of bills.

I would once again like to stress the overriding importance of the increase in the maximum to $50, which is by far the most important change involved.

Senator DOUGLAS. Thank you very much.

Now, I notice that you are silent on the question of increasing the scale or the duration of benefits for loss of limb under permanent and partial disability.

Mr. LARSON. That is the schedule, you mean?

Senator DOUGLAS. Yes.

Mr. LARSON. On that I would like to say this: There has not been time to develop an administration position in the usual way on this point. I would merely like to say this morning that I personally am in favor of this change which brings the schedule up to the amount of the Federal Employees Compensation Act and removes the top limit.

Senator DOUGLAS. I was just going to raise that question, because, as I understand it, the schedule which is provided in the Morse-Magnuson bill grants to the longshore workers and those in the District of Columbia the same duration for permanent-partial disability in the case of loss of limbs or fractions thereof, as is provided in the Federal Employees Compensation Act.

Mr. LARSON. That is correct, yes.

Senator DOUGLAS. That seems very reasonable to me.

Mr. LARSON. The setting of these schedules is of course again a very approximate business. It is obviously not very easy to put a price tag on the loss of a hand or a finger. It sounds awfully cold-blooded, but it is an administrative device and a convenience to administrators so that they can make prompt awards in cases of clean-cut loss of members. That is without having to speculate too much about how much disability is represented.

Senator DOUGLAS. If my memory serves me correctly, at one time the schedule was as is proposed by Senators Magnuson and Morse, and then by amendment it was cut down.

Mr. LARSON. It was cut down by the device of subtracting from it the so-called healing period, which was, to take the loss of an arm, about 30 weeks, and so it cut it from 312 to 280 weeks.

Senator DOUGLAS. This Magnuson-Morse bill proposes to restore it to 312?

Mr. LARSON. Yes, sir.

Senator DOUGLAS. I made a hasty inspection and it looks as though the Magnuson-Morse bill is aimed at bringing the schedule up to its earlier level.

Mr. LARSON. That is correct, yes.

Senator DOUGLAS. You are not speaking for the administration when you say that you personally approve of this?

Mr. LARSON. There has not been time, as I say, to go through the usual channels of developing an administration position.

Senator DOUGLAS. Would you be willing to consult the Secretary or whoever must give clearance on this and send a letter?

Mr. LARSON. I can speak for the Secretary of Labor on this, but I cannot speak for the administration as a whole.

Senator DOUGLAS. Would you be willing to try to get a commitment?

Mr. LARSON. I think in the normal course this kind of thing will go through the Bureau of the Budget channels and I presume eventually an administration position will emerge.

Senator DOUGLAS. Well, time marches on, and we want to get action this session. I hope that you will impress on the Bureau of the Budget the need for celerity.

Thank you very much.

The Magnuson-Morse bill removes the ceiling upon total benefits.

Mr. LARSON. I am very definitely in favor of that. In fact, with the increase to $50, there is obviously some adjustment in that necessary, whether the schedule is changed or not.

I see no reason for a ceiling, because, so far as this schedule is concerned, if you will multiply the number of weeks times the number of dollars you come out at what amounts to pretty much a ceiling for that part of it. The only function of a ceiling would be that if you had a long temporary total disability period, and then the full schedule award, you might be deprived of a considerable part of what you should have gotten for temporary total disability. In an unusually protracted healing period, a ceiling might work a considerable injustice.

Senator DOUGLAS. Well, I would say that you have gone a long way to narrow the differences between the Magnuson-Morse bill and the administration bill. I only hope that your commitments may be honored by the Bureau of the Budget.

Thank you very much.

The next witness will be Mr. Walter Mason, legislative representative, American Federation of Labor.

I am very glad to see you, Mr. Mason, and very glad to welcome you. We are working under a time handicap, because bills are coming up on the floor.

STATEMENT OF WALTER J. MASON, MEMBER OF THE NATIONAL LEGISLATIVE COMMITTEE OF THE AMERICAN FEDERATION OF LABOR, REPRESENTING THE AMERICAN FEDERATION OF LABOR AND THE INTERNATIONAL BROTHERHOOD OF LONGSHOREMEN, AFL

Mr. MASON. My name is Walter J. Mason, legislative representative and member of the national legislative committee of the American Federation of Labor.

I am appearing here today on behalf of the International Brotherhood of Longshoremen, the metal trades department of the American Federation of Labor, and the Washington Central Labor Union. All of these organizations are directly concerned and have called upon the American Federation of Labor for assistance in the advancement of this legislation.

Mr. Chairman, with your permission, I would like to summarize briefly the views of the American Federation of Labor on some of the proposals that are now pending before the committee.

First of all, I wish to say that we are indeed grateful that this subcommittee has decided to hold public hearings on this important issue. It has been 7 years since Congress last reviewed the provisions of the Longshoremen and Harbor Workers' Compensation Act. Congressional action to bring the terms of this statute more in line with present-day conditions is long overdue.

This law is far more important than its name would imply. Not only is this statute a workmen's compensation law for longshoremen and other maritime workers, but in addition, it is the basic workmen's compensation act for the District of Columbia. It also applies to employees of Government contractors at defense bases or on public works outside the United States. For this reason, Congress has

particular responsibility toward this legislation. It should seek to develop a model compensation law toward which State legislative efforts could be directed.

I might add to this, Mr. Chairman, that I believe the act at the present time covers about 500,000 employees. Now, to break it down. there are 100,000 or more ship repairmen, which are represented by our metal trades department. We also have longshoremen that are represented by our International Brotherhood of Longshoremen, and our Washington Central Labor Union represents a large number here in the District.

In a number of respects, the present law has become outmoded. Many of its compensation standards were geared to the wage levels prevailing when the law was last amended in 1948. In many ways, the basic provisions in this law have fallen behind the standards which have been established by the various States.

A number of bills are now pending before this committee. Among them are S. 594, S. 1307, S. 1308, and S. 1646. Three of these bills, all except S. 1308, seek to amend the various standards written into the law relating to levels of compensation, waiting periods, and number of weeks for which compensation is payable for specific injuries.

S. 1308 is directed toward certain changes in the handling of the reserve fund established under section 44 of the present law.

I must add too that yesterday there was a new bill introduced, S. 2280, which I believe is almost in line with the position taken of the American Federation of Labor on the needed changes to improve the present law.

Let me indicate briefly to the committee the views of the American Federation of Labor on each of these important questions.

MAXIMUM WEEKLY BENEFITS FOR DISABILITY

Section 8 of the present law sets forth the principle that compensation for disability shall be based on two-thirds of the employee's average weekly wage. However, this compensation formula is limited by section 6 (b) setting a maximum amount of $35 a week that any worker can draw in compensation benefits.

The $35 figure is already below the maximums set by 16 States. Moreover, in Arizona, Oregon, Alaska, and Hawaii, the maximum set forth in the law is over $50.

As Senator Smith indicated in the statement he made on March 4, 1955, at the time he introduced S. 1307, weekly wages of longshoremen today—

have advanced substantially and in some areas are approximately $90.

We believe that the maximum benefit should be raised to $60 a week. This would provide compensation at a rate of two-thirds of average weekly wages for all workers earning up to $90 a week.

MINIMUM WEEKLY COMPENSATION FOR TOTAL DISABILITY

In the present law this minimum level is set at $12 a week or average weekly wages if this was below the $12 figure. The laws of 27 States already provide a higher minimum and in 22 States, the amount is set at $15 or more. In 3 States this minimum is set at $20 a week, and we believe this is the figure that Congress should enact.

WAITING PERIOD

Under the present law, workers must wait through a 7-day period before receiving any workmen's compensation benefits. Two of the bills, S. 594 and S. 1646, would reduce this period to 3 days. We believe this is an entirely practical proposal. A total of 8 States and Alaska already provide a 3-day waiting period, and in 1 State, Oregon, the waiting period has been entirely eliminated. A 3-day waiting period would mean that the injured worker would receive financial assistance at a time when he needs it most, directly after his injury.

LENGTH OF TIME NECESSARY BEFORE COMPENSATION IF MADE RETROACTIVE TO DATE OF DISABILITY

Under the present law, compensation is made retroactive to the date of the disability only if the injury continues for longer than 7 weeks. This 7-week period is much longer than comparable State standards—27 of the 33 States which now have a 7-day waiting period provide a shorter period than 7 weeks before compensation is made retroactive. In 4 States this period is 2 weeks or less. We see no reason why a 14-day period is not ample to test the validity of an injury under a workmen's compensation law. We believe that any injury which lasts as long as 2 weeks should entitle the claimant to compensation dating back to the date the disability was sustained.

AVERAGE WEEKLY WAGES FOR DEATH BENEFITS

In computing death benefits under the present law, section 9 (c), average weekly wages are "considered to have been" not more than $52.50 a week or less than $18. These figures should be selected as indicating the range of actual wages being paid. We recommend that the maximum be set at the $90 figure mentioned by Senator Smith and that the minimum be raised to $30 a week.

COMPENSATION PERIOD FOR CERTAIN PERMANENT PARTIAL DISABILITIES

One of these bills, S. 1646, would adjust the number of weeks during which compensation would be paid for certain permanent partial disabilities. In particular, changes would be made for the loss of an arm, leg, hand, foot, eye, toe, and finger. We believe these changes are more than justified by the present schedules adopted in State laws. For example, under the present law an individual losing a thumb is entitled to compensation for 15 weeks. Only 14 of the States provide payments for as short a time as this, while some of them provide payments for as long as 75 weeks. We believe that the adjustments proposed in S. 1646 should be adopted. We also favor the repeal of section 14 (m) which imposes an arbitrary limit on total aggregate compensation payable for any injury.

RESERVE FUND

The proposals made in S. 1308 are of a different character. They relate to the special fund established in section 44 of the law. This fund is not the result of any congressional appropriation but has been built up both from payments made by stevedoring employers and from various types of fines and penalties. For example, in cases of fatal injuries where no survivors are eligible for benefits under the law, the employer of the deceased worker is required to pay $1,000 into this special fund. In recent years, this fund has grown all out of proportion to the original size contemplated by Congress. For the past few years, receipts have averaged approximately $35,000 a year, while expenditures have been only $10,000. As a result of these excess receipts, the fund on June 30, 1954, totaled over $700,000.

Under the law these receipts can be spent for certain specific purposes. Now Congress has the opportunity to provide additional constructive uses for this fund. For example, we believe that the $10 a week that is currently authorized to assist employees undergoing vocational rehabilitation could easily be raised to $25 a week, as contemplated in S. 1308. Obviously, the present $10 a week is much too small to offer any real benefit to an injured worker undergoing training and rehabilitation. We suggest that a $25 weekly payment would provide a far more meaningful supplement under these circumstances.

S. 1308 would also allow the Secretary of Labor to utilize the fund for several other purposes. He would be able to draw upon it to obtain needed rehabilitation services in cases where the individual's needs cannot be met by existing facilities. The fund could also be used to provide compensation for those few employees who are unable to obtain compensation because their employer has become bankrupt. Certainly in these cases, the worker should not be penalized simply because his employer has had the bad fortune to sustain business reverses.

We urgently request that this committee give full consideration to these recommendations and report out a greatly strengthened bill at the earliest opportunity.

Senator DOUGLAS. Thank you very much, Mr. Mason.

Mr. MASON. I also have two exhibits, Mr. Chairman. One is a comparison of the provisions relating to the waiting period and to the minimum and maximum weekly benefits under the Longshoremen and Harbor Workers' Compensation Act with benefits under State acts, which I would like to file with the committee as a comparison.

Senator DOUGLAS. That will be made a part of the record.

Mr. MASON. And the other is a comparison of certain provisions in the Longshoremen and Harbor Workers' Compensation Act with the four bills that are now pending before the committee.

Senator DOUGLAS. That also will be included in the record.

(The documents are as follows:)

Comparison of certain provisions in the Longshoremen and Harbor Workers' Act with S. 594 (Morse); S. 1307 (Smith); and S. 1646 (Magnuson)

	Longshoremen's Act	S. 594	S. 1307	S. 1646
Waiting period	7 days	3 days	7 days	3 days.
Compensation retroactive to day of disability if disability lasts period indicated.	7 weeks	14 days	28 days	14 days.
Benefits for disability—66⅔ percent of average weekly wage, subject to:				
Maximum weekly compensation.	$35	$50	$50	$50.
Minimum weekly compensation for total disability.	$12 per week, or average wage if less than $12.	$20 or average wage if less than $20.	$15 or average wage if less than $15.	$20 or average weekly wage if less than $20.
In computing death benefits average weekly wages shall be considered:				
Not more than	$52.50 per week	No change	$75	$75.
Nor less than	$18, but total compensation shall not exceed weekly wage.	do	$22.50, but total compensation shall not exceed weekly wage of the deceased.	$30, but total compensation shall not exceed weekly wages of the deceased.
Period during which compensation is payable for certain permanent partial disabilities.	*Weeks* Arm 280 Leg 248 Hand 212 Foot 173 Eye 140 Thumb 51 1st finger 28 Great toe 26 2d finger 18 3d finger 17 Toe other than great 8 4th finger [1] 7	do	No change	*Weeks* Arm 312 Leg 288 Hand 244 Foot 205 Eye 160 Thumb 75 1st finger 46 Great toe 38 2d finger 30 3d finger 25 Toe other than great 16 4th finger [1] 15

[1] Other schedule injuries in the law not shown, since not changed by any bill.

Comparison of provisions relating to waiting period and to minimum and maximum weekly benefits, under the Longshoremen and Harbor Workers' Act with benefits under State acts. (1955 legislation included where available.)

	Longshoremen and Harbor Workers' Act	States with this standard	States with higher standards
Waiting period	7 days	33	No waiting period—1 State, Oregon; 3 days—8 States, Alaska; 4 days—1 State, Florida, Puerto Rico; 5 days—4 States, Hawaii; 6 days—1 State, Illinois.
Compensation retroactive to date of disability.	7 weeks	California and District of Columbia have same period; 5 other States with 7-day waiting period do not provide for retroactivity. (Alabama, Georgia, Iowa, Kansas, Pennsylvania.)	27 States with 7-day waiting period require disability for a shorter period than 7 weeks. These periods range from 7 days to 42 days.
Maximum weekly benefit for temporary total.	$35	4 States (Florida, Maryland, Missouri, South Carolina), and District of Columbia.	16 States and 2 Territories exceed $35; 2 set between $35* and $40, Illinois, New York. 14 States,[1] Alaska, Hawaii, set $40 or more; (4 of these setting over $50, Alaska, Hawaii, Arizona, Oregon).
Minimum weekly benefit for temporary total.	$12, or average weekly wage if computation of benefits results in less than $12.	6 States, District of Columbia and Longshoremen (Connecticut, Iowa, New York,* South Dakota,* Tennessee,* New Hampshire*).	27 States and 1 Territory exceed $12; 22 States and Hawaii set $15 or more; [2] 3 set $20 or more (Oregon, Nebraska, Pennsylvania); 2 States (Illinois, Wisconsin), set between $12 and $15.

[1] Arizona, California, Connecticut, Idaho, Massachusetts, Michigan, Minnesota, Nevada, North Dakota, Oregon, Utah, Washington, Wisconsin, Wyoming.

[2] California, Delaware,* Indiana,* Iowa,* Maine, Maryland,* Massachusetts,* Michigan, Minnesota,* Missouri,* Montana, Nebraska,* New Mexico,* North Dakota, Oklahoma,* Oregon,* Pennsylvania,* Rhode Island, Tennessee, Utah,* Vermont,* West Virginia.

*Actual wage if less.

Senator DOUGLAS. Thank you very much, Mr. Mason, for your testimony.

In general you seem to agree with Senate 2280, except that you would favor an increase of the maximum to $60 a week.

Mr. MASON. We believe that $60 a week is more realistic if you intend to follow the principle of the 66⅔ percent.

For example take our ship repairmen. Their average weekly wage is closely in line with the longshore industry, between $90 and $100 a week. Our building trades, which is the second largest industry here in the District of Columbia, averages $100 a week or more. With the exception of retail sales employees and a few other minor groups in the District of Columbia, practically all others covered under the act are receiving $90 or more.

Senator DOUGLAS. Thank you very much.

The next witness is Capt. William V. Bradley, president of the International Longshoremen's Association.

Captain Bradley?

We are very glad to have you as a witness, Captain Bradley.

STATEMENT OF CAPT. WILLIAM V. BRADLEY, PRESIDENT OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT

Captain BRADLEY. Mr. Chairman, I want to take this opportunity to thank this committee for listening to us today when we give our views on the bills that are presented before this committee.

My name is William V. Bradley, president of the International Longshoremen's Association, Independent.

We are filing a statement with your committee and, in addition to the statement, I would like to give my views on the bills that are presented before your committee. In studying the bills we find that as to the law itself, the Longshoremen and Harbor Workers' Compensation Act revision has been overdue a long time, and that the bills presented before your committee do not come up to the standard of some of the State compensation acts. We feel that the longshoremen and the harbor workers are being and have been for a long time, as far as this law is concerned, discriminated against.

The International Longshoremen's Association is in agreement that the law should be amended and the figure that has been presented on the basis of a maximum of $50 a week we feel should be increased to the maximum of 66⅔ weekly earnings.

Senator DOUGLAS. Without any limit on the number of dollars?

Captain BRADLEY. Yes, without limit on the number of dollars, that is right.

We think the minimum should meet the $20 presented on one of the bills. We have not had a chance to study this new bill up to the present time.

We also feel that the requirements of the death benefits should be excluded from the bill and leave the maximum to be settled in the courts as far as the death benefits are concerned.

I am sorry that I am not more familiar with this, but this was brought to my attention yesterday, and I am really not too familiar with it beyond what I have here.

I would like to state now that we will present more statements to the committee in the near future.

Senator DOUGLAS. Thank you very much, Captain.

(Captain Bradley's prepared statement follows:)

STATEMENT OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, REGARDING CHANGES IN THE LONGSHOREMEN AND HARBOR WORKERS COMPENSATION ACT

The International Longshoremen's Association (Independent) believes that the present law applying to longshoremen and harbor workers is inadequate, outmoded, and requires amendment so that the workers in this industry receive proper protection and compensation from injuries received on the job.

Longshore work is one of the most hazardous occupations in the United States. It is exceeded in the severity and frequency of accidents only by the logging industry. The rates of accidents and time lost through accidents has been on the upgrade. This condition is illustrated by the following figures quoted from the United States Department of Labor Bulletin No. 1164 (1954).

Injury frequency per million man-hours worked

Industry	1952	1951	Increase, percent
Stevedoring	87.9	76.5	11.4
Highway construction	46.0	50.8	----
Coal mining	59.5	51.7	7.7

This injury frequency rate is exceeded only by the logging industry. The longshore industry also has, in addition to the greatest injury frequency rate, the greatest number of days lost per 1,000 man-hours of work. This figure is 9.5 per 1,000 man-hours. With this type of accident rate the problem of proper workmen's compensation is of great importance to the members of our organization. This concern is felt by the 100,000 members of our organization from Corpus Christi, Tex., to Portland, Maine.

INTENT OF CONGRESS IN PASSING ORIGINAL LAW

It was obviously the intent of Congress in passing the original act in the 69th Congress to provide benefits identical with the Federal Employees Compensation Act providing 66⅔ percent of their weekly ceiling earnings. The figure of 66⅔ was based upon studies of the New York State workmen's compensation law. The final bill provided for a maximum payment of $25 per week which was based upon a then scale in 1927 of $37.50 per week. The present maximum of $35 per week was a far cry from 66⅔ percent of the basic earnings of longshoremen.

Two facts stand out in this legislative background: First, the original maximum of $25 per week was drawn from the maximum set by the Federal Employees Compensation Act. The Congress intended that the 66⅔ percent of weekly earnings should be the measuring standard.

1948 AMENDMENTS

The Congress in 1948 amended the Longshoremen and Harbor Workers Act, raising the $25 maximum to $35 per week, along with a boost in the minimum from $8 to $12. The burial allowance was increased to $400. Death benefits and limitations on total compensation for injuries were liberalized to correspond with the changes in the weekly maximum.

Another shortcoming of the 1948 amendment was the failure to revise schedule of indemnities for loss of arms, legs, etc. The original bill provided for an increase in this schedule, but because of faulty language this amendment was dropped in the final changes of the legislative process.

On the whole, the 1948 changes were regarded as a downpayment bringing the benefit features of the act into line with the changes in living costs and wage rates that had taken place since 1927. This is shown by the continuing legislation which has been introduced year after year since 1948 without success.

NEEDS OF THE WORKERS IN THIS INDUSTRY

In view of the high accident rate and severity of accidents in this industry due to the extreme hazards the responsibility falls upon Congress to provide adequate compensation for the worker and his family when he is injured. The basic principles of Congress in setting a 66⅔ percent basis in 1948, when the Federal Employees Compensation Act was amended, should also apply to the workers covered under the Longshoremen and Harbor Workers Act.

Present hourly earnings of longshoremen on the North Atlantic are $2.42 per hour. These earnings will automatically go to $2.48 per hour on September 30, 1955. It is obvious that the $35 figure offers no real protection for workers earning over $100 per week. It should be noted that approximately 25 percent of a longshoreman's earnings are overtime hours calculated at time and one-half. The maximum should be raised to at least $50 per week.

Equally important to the members of our organization in view of the accident-frequency rate in this industry is the need for amending section 6 of the present act. This provision which provides that payment of compensation does not begin until the 7th day is extremely unfair and places a burden upon the wives and children of our members. This present provision adversely affects thousands of longshoremen who are unable to collect anything for their injuries. We are

heartily in accord with the provision of S. 1646 by Mr. Magnuson which provides payment for injuries after 3 days have passed and in cases which go beyond 14 days payments shall be made from the first day on injury. Such a change in the act will only bring the longshoremen and harbor workers into line with the provision of the Federal Employees Compensation Act, as amended in 1948.

INJURY SCHEDULE OF THE PRESENT ACT

The present act is extremely backward with regard to the schedule of benefits for various injuries. A comparison of the benefit schedule of the present act with those of the States of New York and Jersey making up the port of New York sharply illustrate this point. The port of New York employs the largest number of longshoremen in the United States.

Number of weeks compensation allotted for various losses

State	Arm	Leg	Hand	Foot	Eye	Thumb	First finger	Second finger
New Jersey	300	275	230	200	175	47	29	24
New York	312	288	244	205	160	75	46	38
Longshoremen's and Harbor Workers' Act	280	248	212	175	140	51	28	26

From the foregoing schedule it is obvious that the Longshoremen's and Harbor Workers' Compensation Act is greatly in need of revision. Certainly there is no justification for the fact that a longshoreman working in the hold of a ship or on the deck of a ship or lighter should get less for an injury than a longshoreman who works on a dock. The longshoreman's job in the hold of a ship is far more dangerous than a man working on the dock and is more likely to be injured. The schedule of benefits in S. 1646 begins to approach a solution for this condition and should be adopted by your committee. This is substantially the same as the benefits now payed by the State of New York for similar accidents.

DEATH BENEFITS

The death benefit schedule represents the same inequities that exist in the other features of the existing law. The International Longshoremen's Association is in favor of using an average of $97.50 and $37.50 in computing death benefit payments. Section 9E should be amended to make this change.

MAXIMUM LIMIT ON COMPENSATION FOR DISABILITIES

Section 14 (m) of the present law should also be amended. This section provides a limit of $11,000 for disabilities and $10,000 on permanent partial disabilities. These amounts should be eliminated and no limit should be provided. No such limits now exist in the Federal Employees Compensation Act.

There are about 100,000 longshoremen engaged in waterborne commerce. This industry represents the lifeblood of America. These workers have not enjoyed the benefits to which they are entitled. The Congress cannot have one policy for one group of citizens under its jurisdiction and another policy for longshoremen. We are not second-class citizens and are entitled to the same consideration as any other group. The responsibility falls upon your committee and the Congress to see to it that the miseries and hardships caused by accidents on board ship are lightened. Failure of your committee to act would continue the hardships and miseries that many wives and children are now faced with. Our proposals we believe should be the minimum the committee should recommend to Congress. We expect to see it done. Both political parties have been in favor of this change. The eyes of every member of our union from Portland to Corpus Christi are upon you.

Senator DOUGLAS. Is Captain Buxton, the director of safety of the New York Shipping Association, here?

Would it be possible for you to file your long statement and give us a summary?

STATEMENTS OF CAPT. G. H. E. BUXTON, DIRECTOR OF THE SAFETY BUREAU OF THE NEW YORK SHIPPING ASSOCIATION, INC.; H. S. WEBB, VICE PRESIDENT OF T. HOGAN & SONS, INC.; AND F. P. ADAMO, INSURANCE MANAGER OF INTERNATIONAL TERMINAL OPERATING CO., INC., OF NEW YORK

Captain BUXTON. I have a summary, sir.

I am G. H. E. Buxton, and I live at 140 Bay Ridge Parkway, Brooklyn, N. Y. I am the director of the Safety Bureau of the New York Shipping Association, Inc.

The two gentlemen attending with me are Mr. H. S. Webb, vice president of T. Hogan & Sons, Inc., and Mr. F. P. Adamo, insurance manager of International Terminal Operating Co., Inc., who are direct employers of longshoremen and are familiar with the practical aspects of compensation procedures and requirements.

We are vitally interested in the bill, S. 1646, to increase certain benefits payable under the Longshoremen's and Harbor Workers' Compensation Act.

I should add here, sir, that we have considered S. 594 and S. 1307 which we believe contain essentially the same sections as S. 1646.

The New York Shipping Association is an incorporated association of steamship company operators of, and agents for, ships engaged in deepwater service from and to the port of Greater New York and vicinity, to and from foreign ports, United States possessions and ports on the west coast of the United States, and of contracting stevedores, contracting marine carpenters, and other employers engaged in related or associated activities in which waterfront labor is employed.

Its approximately 165 members and their associated or affiliated companies represent over 90 percent of the deepwater employer interests employing longshore labor and affiliated classifications at the port of Greater New York and vicinity.

Senator DOUGLAS. Do you cover the Jersey side, too?

Captain BUXTON. Yes, sir, that covers the New Jersey side of the port.

The activities of the association are engaged in the negotiation of labor agreements, and the International Longshoremen's Association, independent, and its affiliated locals for the entire port of Greater New York and vicinity, to the adjustment of disputes or differences arising between the parties under these collective bargaining agreements, and so on.

Since April 1952, the association has had a safety bureau whose primary activity is devoted to the prevention of accidents on the New York and New Jersey waterfront. This bureau with the aid and direction of the association's safety and workmen's compensation insurance committee also studies matters of workmen's compensation insurance which may affect our industry.

At the outset is should be stated that it is the association's view that the United States Longshoremen's and Harbor Workers' Compensation Act should provide adequate protection for an injured longshoreman and his family. It is with that in mind that we submit our views on the proposed amendments to the act as indicated in S. 1646.

Section 1, and I refer, of course, to S. 6146, proposes to reduce the waiting period to 3 days and pay benefits from the date of disability after 14 days. As indicated in bulletin 161, which is entitled "State Workmen's Compensation Laws as of September 1954," and issued by the United States Department of Labor, and I have a spare copy here, if you wish to have that, in most States the waiting period is 7 days, which we believe should be continued.

At the present time disability benefits for the waiting period are paid after 7 weeks. We believe they should be paid at the end of 5 weeks.

It is also proposed to increase the weekly maximum benefits to $50 from the present rate of $35. While we realize that the Federal act covers all of the States in the Union, and there are bound to be variations in the compensation rates between the Federal act and the various State acts, there should not be a great disparity between the compensation rates applicable to those injured on land and to those injured aboard ship.

At the present time, the maximum rate varies considerably. For example, in the State of Maine it is $27; in Massachusetts it is $30; in New York it is $36; in New Jersey $30; in Pennsylvania $32.50; in Maryland $35.50, and in Virginia $27. With this in mind we recommend that the maximum benefit payable under the Longshoremen's and Harbor Workers' Compensation Act ought not to be increased beyond $36 per week.

Senator DOUGLAS. You would raise it from $35 to $36?

Captain BUXTON. Yes, sir.

The other proposed change in this section is that compensation for total disability shall not be less than $20 per week. We believe this should remain at $12 per week as presently provided for in the act, since it is the same as the minimum benefits in New York and above those of the State of New Jersey.

The bill also proposes to increase the schedule awards contained in section 8c, subparagraphs 1 through 12. For example, the benefit for loss of a leg will be increased from 244 to 288 weeks. This is higher than the benefits in the States previously mentioned. For example, the State of Maine allows 150 weeks, Massachusetts 175 weeks, New York 288 weeks, less a credit of 40 weeks, New Jersey 275 weeks, Pennsylvania 215 weeks, Maryland 212 weeks, and Virginia 175 weeks.

We recommend, therefore, that the scheduled awards for permanent partial disability be maintained as they presently appear in the act. On the other hand, if the proposed changes are to be made, then the act should also be amended by striking out from section 8 (c) the clause reading—

which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with subdivision B or subdivision E of this section, respectively—

and by adding a new subsection similar to section 15, subdivision 4 (e) of the New York State workmen's compensation law.

Enactment of S. 1646 will result in a drastically increased cost of workmen's compensation insurance. For example, in the case of 100 percent loss of a leg, increasing both the weekly benefit and the scheduled award would, in this case, result in an increased cost of almost 66 percent.

Furthermore, other proposed scheduled awards reflect increases up to 260 percent.

Another proposal of the act is to amend section 9 (e) of the present act by increasing the average weekly wages for computing death benefits from $52.50 to $75.

We recommend that in computing death benefits the average weekly wages of the deceased shall be considered to have been not more than $60 nor less than $18 but the total weekly compensation shall not exceed the weekly wages of the deceased.

This recommendation increases the maximum payments to dependents of the deceased which we believe is justified.

Section 4 repeals section 14 (m) of the present act. We strongly recommend that section 14 (m) be retained. While we agree that there should be no limitation in the payment of death benefits, and in the payment of permanent total disability benefits, we nevertheless urge that the maximum of $11,000 for permanent partial disability and $10,000 for temporary total disability or temporary partial disability be maintained for the following reasons.

First, we believe that the Longshoremen's and Harbor Workers' Compensation Act as presently written is sound, and we are fearful that the repeal of section 14 (m) would result in the encouragement of malingering and self-induced injury, thereby defeating the intent and purpose of the act.

Second, we believe in a limit of benefits for temporary total disability, temporary partial disability, and permanent partial disability, because disabilities may be the result of subjective complaints such as those involving the head and the back. It is our considered opinion that this type of complaint, involving heads and backs, should be scheduled. It has been proven that the disposition of such cases on a schedule basis has aided in the successful rehabilitation of the injured person.

Senator DOUGLAS. What do you mean, Captain, by scheduling the benefits?

Captain BUXTON. Putting it in a schedule the same as you have for the schedules of loss of certain limbs, a definite schedule.

Senator DOUGLAS. For head and back injuries? Is that what you mean?

Captain BUXTON. Yes, sir.

Senator DOUGLAS. This is one of the most difficult fields, head and back injuries. While some head and back injuries can be diagnosed, others cannot be diagnosed.

Captain BUXTON. I realize that, sir, but we believe it has an advantage in scheduling them.

Senator DOUGLAS. You think compensation ought to be automatic, even though the injury was not real?

Captain BUXTON. If it can be measured, yes, sir.

Senator DOUGLAS. All right.

Captain BUXTON. Third, furthermore, these limits should be maintained because there is no provision in the Longshoremen's and Harbor Workers' Compensation Act where a second injury aggravates a condition already existing. For example, the New York State Compensation Law, section 15, subdivision (8) provides for the reimbursement to the employer, from a special disability fund, for

all compensation and medical benefits subsequent to those payable for the first 104 weeks of disability.

4. Another reason for maintaining these maximum benefits is that there is generally no preemployment physical examination for longshoremen. On this account the employer, because of lack of knowledge of a longshoreman's physical condition, may be forced to assume responsibilities beyond reasonable limits.

We appreciate having had the opportunity of appearing before this committee. We sincerely hope that consideration will be given to the recommendations we have made. We trust that you will not hesitate to call upon us if we can be of any further assistance.

Now, sir, we have not considered rehabilitation in our statement. We would be very happy to submit a statement on that.

Senator DOUGLAS. We would appreciate it if you would.

(The statement appears at p. 107.)

Captain BUXTON. We would also like to say that there was some discussion earlier on the matter of the determination of pay, and I would like your permission to ask Mr. Webb to say something on that.

Senator DOUGLAS. I was going to ask you to submit a statement on that, and I am very glad to have you bring up that issue.

Mr. WEBB. The determination of pay as defined in section 10 of the act is divided into three paragraphs. The first paragraph is the 6-day worker, or the first part of the first paragraph is 6-day worker, and the second part of that paragraph is a 5-day worker, and that is for an employee who has worked in the employment during substantially the whole part of the year.

As far as longshoremen go, as you know, it varies quite a bit with their employment and they are not considered a 5-day worker or a 6-day worker.

Paragraph (b) is for those not in the employment during that period and that also takes up the 6-day worker and the 5-day worker. Then we come to paragraph (c), which is primarily used for the determination of pay of the longshoremen in the act.

Senator DOUGLAS. Do you have the same difficulties with paragraph (c) that I had?

Mr. WEBB. That is absolutely right.

At the present time, the longshoremen in the port of New York are getting $2.42 an hour. Most of them work 8 hours a day, but the union contract does allow a 4-hour period.

So Mr. Driscoll was quite correct when he said that some longshoremen work on a 4-hour period. However, most of the men do work for 8 hours a day. Eight hours times $2.42 comes up with a daily wage of $19.36. If we multiply the daily wage times the 5-day worker, we come up with $96.80 as a weekly wage for longshoremen on a 40-hour weekly pay.

The paragraph says the average annual earnings in the third line, which is used in paragraph (d) to divide that amount by 52 weeks to come up with the average weekly wage says this:

> Having regard to the previous earnings of the injured employee in the employment in which he was working at the time of the injury and of other employees of the same or similar class working in the same or similar employment in the same or neighboring locality.

To be perfectly frank, that is very hard to figure out in any other way except taking $2.42 and 8 hours a day and coming up with $19.36. So you can pretty nearly always say that the man's daily rate is $19.36.

Using that figure, automatically, all longshoremen will get the maximum amount allowed under the law. I do not know what the figures are, but I think most longshoremen get $35 a week now which is the maximum under the law.

Senator DOUGLAS. You are speaking of injuries, yes?

Mr. WEBB. Yes, as far as the weekly pay of compensation is concerned, yes.

So our feeling in New York is that as far as the regular longshoreman goes, we think he should get 66⅔ of his wage up to the maximum amount. One of our problems is the casual worker who comes in for 8 hours.

Senator DOUGLAS. I was going to ask a question on that.

Mr. WEBB. That is correct.

That has been a real headache, and I do not know what the answer is. I would like to discuss it with Mr. Driscoll and talk it over with him.

Senator DOUGLAS. Would you submit a statement on this point?

Mr. WEBB. We would like to.

Senator DOUGLAS. What you are saying is that if you base your compensation on $95 a week, in practice the very large percentage of men get 2 or 3 days a week, you would boost your compensation payments to 100 percent or more of the actual weekly earnings.

Mr. WEBB. That is right.

Senator DOUGLAS. And you would not hold to two-thirds?

Mr. WEBB. It does not say anything in (c) here about what the man actually gets. If his actual wages are low then we take the similar worker in the industry which brings it up to the maximum again.

Senator DOUGLAS. It is a very difficult problem, yes.

There is a question as to whether you should be compensated for time during which you were available but not employed, or simply for time actually worked. I do not know the answer to it either, but it is a very interesting problem.

(Captain Buxton's prepared statement follows:)

STATEMENT ON BEHALF OF NEW YORK SHIPPING ASSOCIATION, INC., NEW YORK, N. Y.

I am Capt. G. H. E. Buxton and I live at 140 Bay Ridge Parkway, Brooklyn, N. Y. I am the director of the safety bureau of the New York Shipping Association, Inc. Attending this hearing with me are Mr. H. S. Webb, vice president of T. Hogan & Sons, Inc., and Mr. F. P. Adamo, insurance manager of International Terminal Operating Co., Inc., who are direct employers of longshoremen and are familiar with the practical aspects of compensation procedures and requirements.

We are vitally interested in the bill (S. 1646) to increase certain benefits payable under the Longshoremen's and Harbor Workers' Compensation Act.

The New York Shipping Association is an incorporated association of steamship company operators of, and agents for, ships engaged in deepwater service from and to the port of Greater New York and vicinity, to and from foreign ports, United States possessions and ports on the west coast of the United States, and of contracting stevedores, contracting marine carpenters, and other employers engaged in related or associated activities in which waterfront labor is employed. Its approximately 165 members and their associated or affiliated companies represent over 90 percent of the deepwater employer interests employing longshore labor and affiliated classifications at the port of Greater New York and vicinity. The activities of the association are devoted largely to the negotiation of labor agreements between its members and their associated or affiliated companies and the International Longshoremen's Association, independent, and its affiliated locals, for the entire port of Greater New York and vicinity, to the

adjustment of disputes or differences arising between the parties under these collective bargaining agreements, etc.

Since April 1952, the association has had a safety bureau whose primary activity is devoted to the prevention of accidents on the New York and New Jersey waterfront. This bureau, with the aid and direction of the association's safety and workmen's compensation insurance committee, also studies matters of workmen's compensation insurance which may affect our industry.

At the outset it should be stated that it is the association's view that the United States Longshoremen's and Harbor Workers' Compensation Act should provide adequate protection for an injured longshoreman and his family. It is with that in mind that we submit our views on the proposed amendments to the act as indicated in S. 1646.

Section 1 proposes to change section 6 (a) of the present act, as follows: "No compensation shall be allowed for the first 3 days of the disability, except the benefits provided for in section 7: *Provided, however*, That in case the injury results in disability of more than 14 days the compensation shall be allowed from the date of disability."

This section refers to what is commonly known as the waiting period, which is a period of disability that must elapse after the injury before the payment of compensation indemnity benefits begin.

In most States, including the States of Maine, Massachusetts, New Jersey, New York, Pennsylvania, and Virginia, the present waiting period is 7 days, as indicated in bulletin 161, titled "State Workmen's Compensation Laws as of September 1954," page 20, table 5, issued by the United States Department of Labor. It is our belief that this waiting period should remain as it is and not be changed to 3 days. However, we recommend that the remaining part of section 6 (a) be modified to read: "that in case the injury results in disability of more than 35 days the compensation shall be allowed from the date of disability." This would result in payment of the waiting period disability after 5 weeks instead of 7 weeks as the act now provides.

Section 1 also proposes to change section 6 (b) of the present act, as follows: "Compensation for disability shall not exceed $50 per week and compensation for total disability shall not be less than $20 per week: *Provided, however*, That if the employee's average weekly wages, as computed under section 10, are less than $20 per week, he shall receive as compensation for total disability his average weekly wages."

While we realize that the Federal act covers all the States in the Union and there are bound to be variations in the compensation rates between the Federal act and the various State acts, there should not be a great disparity between the compensation rates applicable to those injured on land and to those injured aboard ship.

We should like to note at this point that on July 1, 1954, the maximum weekly benefits in the State of New York were increased from $32 to $36 per week. Since the port of Greater New York and vicinity accounts for the largest volume of stevedoring work in the Nation, we believe that the maximum benefit payable under the New York law might well be considered as a guide. With this in mind, we recommend that the maximum benefit payable under the Longshoremen's and Harbor Workers' Compensation Act ought not to be increased beyond $36 per week.

The other proposed change in this section is that compensation for total disability will not be less than $20 per week. We believe this should remain at $12 per week, as presently provided for in the act, since it is the same as the minimum benefits in New York and above those of New Jersey.

We believe, also, that if the employee's average weekly wages, as computed under section 10, are less than $12 per week, he should receive as compensation for total disability the amount of his average weekly wages.

Section 2 of the bill proposes to amend section 8 (c), subparagraphs 1 through 12, of the present act. Up to this time the schedules in the Longshoremen's and Harbor Workers' Compensation Act have been similar to those contained in the compensation law of the State of New York, as is shown in the following table:

Member	New York State act	Credit under par. 4 (a), sec. 15, New York State law	Net benefit under New York State law	Number of weeks—United States Longshoremen and Harbor Workers' Association
	Weeks			
Arm	312	32	280	280
Leg	288	40	248	248
Hand	244	40	212	212
Foot	205	32	173	173
Eye	160	20	140	140
Thumb	75	24	51	51
1st finger	46	18	28	28
Great toe	38	12	26	26
2d finger	30	12	18	18
3d finger	25	8	17	17
Other toes	16	8	8	8
4th finger	15	8	7	7

Let us illustrate the similarity shown in the above table between the benefits received under the present Federal act and under the present New York State law for a man receiving a permanent partial disability of 100 percent loss of use of a leg and temporary total disability for a period of 40 weeks. It should be noted that under the present Federal law at the rate of $35 per week the man would receive $10,080 while under the New York State law at the rate of $36 per week he would receive $10,368. If we increase the Federal rate from $35 to $36 per week the man would receive an additional $288 making the total amount of $10,368, which is exactly the same as the New York State benefits. The actual computation of this illustration is as follows:

United States Longshoremen's and Harbor Workers' Association

Temporary total, 40 weeks at $35 per week	$1,400
Permanent partial, 100 percent leg, 248 weeks at $35 per week	8,680
Total benefits, both temporary Total and permanent partial	10,080
If rate (United States Longshoremen's and Harbor Workers' Association) was increased to $36 per week then your additional benefit would be 288 weeks at $1 per week	288
Total	10,368

New York State compensation law

Temporary total, 40 weeks at $36 per week	$1,440
Permanent partial, 100 percent leg, 288 weeks at $36 per week	10,368
Total benefit (temporary total and permanent partial)	11,808
Less credit for temporary total paid	1,440
Total	10,368

We recommend, therefore, that the scheduled awards for permanent partial disability be maintained as they presently appear in the act. However, if they are to be changed as proposed in section 2, we then urge that section 8 (c) of the present act be changed by striking out the clause reading "which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with subdivision B or subdivision E of this section, respectively," and by adding a new subsection similar to section 15, subdivision 4 (a) of the New York State workmen's compensation law, as follows:

"4–a Protracted temporary total disability in connection with permanent partial disability. In case of a temporary total disability and permanent partial disability both resulting from the same injury, if the temporary total disability continues for a longer period then the number of weeks set forth in the following schedule, the period of temporary total disability in excess of such number of weeks shall be added to the compensation period provided in subdivision 3 of this section: Arm, 32 weeks; leg, 40 weeks; hand, 32 weeks; foot, 32 weeks; ear,

25 weeks; eye, 20 weeks; thumb, 24 weeks; first finger, 18 weeks; great toe, 12 weeks; second finger, 12 weeks; third finger, 8 weeks; fourth finger, 8 weeks; toe other than great toe, 8 weeks.

"In any case resulting in loss or partial loss of use of arm, leg, hand, foot, ear, eye, thumb, finger, or toe, where the temporary total disability does not extend beyond the periods above mentioned for such injury, compensation shall be limited to the schedule contained in subdivision 3.

If the bill is enacted, the cost of workmen's compensation insurance will be drastically increased. It should be realized that when both the compensation rate and the permanent partial schedules are increased, the total cost will be compounded, as is shown by the following example:

Under present Federal act

Temporary total: 40 weeks at $35 per week	$1, 440
Permanent partial award: 100 percent leg, 248 weeks at $35 per week	8, 680
Total benefit both temporary total and permanent partial	10, 120

Under the proposed amendments

Temporary total: 40 weeks at $50 per week	2, 000
Permanent partial award: 100 percent leg, 288 weeks at $50 per week	14, 400
Total benefits both temporary total and permanent partial	16, 400
Proposed benefits	16, 400
Current benefits	10, 120
Increase [1]	6, 280

[1] Increase of 62.7 percent.

The increase shown in the above example is conservative when we compare it with the increased schedule award for the loss of a fourth finger in which case the increase amounts to 260 percent.

Section 3 of the act proposes to amend section 9 (e) of the present act as follows: "(e) In computing death benefits the average weekly wages of the deceased shall be considered to have been not more than $75 nor less than $30 but the total weekly compensation shall not exceed the weekly wages of the deceased."

We recommend that in computing death benefits the average weekly wages of the deceased shall be considered to have been not more than $60 nor less than $18 but the total weekly compensation shall not exceed the weekly wages of the deceased.

This recommendation increases the maximum payments to dependents of the deceased which we believe is justified.

Section 4 repeals section 14 (m) of the present act. We strongly recommend that section 14 (m) be retained in the act. While we agree that there should be no limitation in the payment of death benefits, and in the payment of permanent total disability benefits, we nevertheless urge that the maximum of $11,000 for permanent partial disability and $10,000 for temporary total disability or temporary partial disability be maintained, for the following reasons:

1. We believe that the Longshoremen's and Harbor Workers' Compensation Act as presently written is sound, and we are fearful that the repeal of section 14 (m) would result in the encouragement of malingering and self-induced injury, thereby defeating the intent and purpose of the act.

2. We believe in a limit of benefits for temporary total disability, temporary partial disability, and permanent partial disability, because there disabilities may be the result of subjective complaints such as those involving the head and the back. It is our considered opinion that this type of complaint involving heads and backs, should be scheduled. It has been proven that the disposition of such cases on a schedule basis has aided in the successful rehabilitation of the injured person.

3. Furthermore, these limits should be maintained because there is no provision in the Longshoremen's and Harbor Workers' Compensation Act where a second injury aggravates a condition already existing. For example, the New York State compensation law, section 15, subdivision (8) provides for the reimbursement to the employer, from a special disability fund, for all compensation and medical benefits subsequent to those payable for the first 104 weeks of disability.

4. Another reason for maintaining these maximum benefits is that there is generally no preemployment physical examination for longshoremen. On this account the employer, because of lack of knowledge of a longshoreman's physical condition, may be forced to assume responsibilities beyond reasonable limits.

We appreciate having had the opportunity of appearing before this committee. We sincerely hope that consideration will be given to the recommendations we have made. We trust that you will not hesitate to call upon us if we can be of any further assistance.

Senator DOUGLAS. The next witness is Mr. Rowland L. Davis, vice president of the Delaware, Lackawanna & Western Railroad.

STATEMENT OF ROWLAND L. DAVIS, JR., VICE PRESIDENT AND GENERAL COUNSEL OF THE DELAWARE, LACKAWANNA & WESTERN RAILROAD

Mr. DAVIS. My name is Rowland L. Davis, Jr. I am vice president and general counsel of Delaware, Lackawanna & Western Railroad.

I am appearing here today on behalf of those railroads who have harbor operations. When I asked for permission to appear on behalf of those railroads, I had not seen Captain Buxton's statement. The railroads that do have a harbor operation have a few longshoremen.

Our position is identical with that stated by Captain Buxton, and we have the same problems. In fact, our men work alongside of his men, and we employ some of his clients.

That is the sum and substance of my statement, and I appreciate the opportunity to make my statement.

Senator DOUGLAS. The subcommittee will conclude these hearings tomorrow, at which time we will have additional witnesses representing longshoremen's organizations, shipping associations, and also employer representatives from the District of Columbia. We will meet at 10 o'clock tomorrow morning.

(Thereupon, at 12:30 p. m., Thursday, June 23, 1955, the subcommittee recessed to reconvene at 10 a. m., Friday, June 24, 1955.)

LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION

FRIDAY, JUNE 24, 1955

UNITED STATES SENATE,
SUBCOMMITTEE ON LABOR OF THE COMMITTEE
ON LABOR AND PUBLIC WELFARE,
Washington, D. C.

The subcommittee met, pursuant to recess, at 10 a. m. in the old Supreme Court room, the Capitol, Senator Paul Douglas (chairman of the subcommittee) presiding.

Present: Senators Douglas and Kennedy.

Present also: Stewart E. McClure, staff director of the committee; Roy E. James, minority staff director; John S. Forsythe, counsel to the committee; Frank V. Cantwell and Michael J. Bernstein, professional staff members; and Grover C. Smith, chief clerk.

Senator DOUGLAS. The subcommittee will come to order.

Before we proceed with the witnesses this morning I would like to read into the record the following telegram from Mr. T. M. Smiddy, manager of the Boston Shipping Association, Inc., declining the invitation of the Subcommittee on Labor to testify on proposed amendment to the Longshoremen's and Harbor Workers' Compensation Act:

> We acknowledge invitation of Senator Paul H. Douglas to testify on pending bills amending the Longshoremen's and Harbor Workers' Compensation Act on Friday, June 24. We understand New York Shipping Association is scheduled to testify on same subject on Thursday, June 23, and it is our position that the testimony and statements of the New York Shipping Association will adequately cover our opinion on this legislation.
>
> BOSTON SHIPPING ASSOCIATION, INC.
> T. M. SMIDDY, *Manager.*

I wish also to state for the record that the Philadelphia Marine Trade Association, through Mr. Robert G. Kelly, solicitor, has notified the subcommittee that the association wishes to make known its support of the position taken yesterday by the New York Shipping Association, with respect to the legislation the subcommittee is considering.

A statement from the association, when received, will be made a permanent part of the record of the hearing.

We also have a telegram from the Steamship Trade Association of Baltimore, Capt. Walton Stevens, president, which will be put in the record at this point, which also endorses the statement of the New York Shipping Association.

Therefore, the shipping associations of these four ports on the Atlantic coast unite behind the position of the New York Shipping Association.

(The telegram referred to follows:)

BALTIMORE, MD., *June 23, 1955.*

STEWART E. MCCLURE,
Staff Director, Committee on Labor and Public Welfare,
United States Senate:

We understand that Capt. G. H. E. Buxton has presented the views of the New York Shipping Association on S. 1646, the provisions of which amend the Longshoremen's and Harbor Workers' Compensation Act in such a way as to raise substantially the amounts of the benefits provided. Our association is in basic agreement with the New York Shipping Association's position that the provisions of S. 1646 would cost the members of our association charged with the responsibility of providing longshoremen's and harbor workers' compensation insurance a considerable amount each year in the form of additional premiums on insurance etc. It is also true that the benefits called for by S. 1646 are in excess of benefits called for by Maryland workmen's compensation law. Our association is in accord with the desire of the New York Shipping Association that S. 1646, if enacted, be enacted with amendments reducing the maximum amounts of the awards provided for in the act. Unfortunately, we will not be able to be present at the meeting called for June 25, to which we were invited to appear and make known our views.

STEAMSHIP TRADE ASSOCIATION OF BALTIMORE, INC.
Capt. WALTON STEVENS, *President.*

Senator DOUGLAS. The first witness this morning is Mr. Edward Schmuck, chairman, insurance committee, Washington Board of Trade. Is Mr. Schmuck here?

The next witness is Mr. Howard M. Starling of the Association of Casualty and Surety Companies. Mr. Starling?

STATEMENT OF HOWARD M. STARLING, MANAGER, ASSOCIATION OF CASUALTY AND SURETY COMPANIES

Senator DOUGLAS. We are very glad to have you here, Mr. Starling.

Mr. STARLING. Thank you, Senator.

Mr. Chairman and gentlemen of the committee, my name is Howard M. Starling, manager of the Washington office, Association of Casualty and Surety Companies, a national trade organization composed of 133 capital stock insurance companies, a substantial majority of which are writing workmen's compensation under the Longshoremen's and Harbor Workers' Act.

Senator DOUGLAS. You do not include the mutuals?

Mr. STARLING. We do not represent the mutuals, sir.

My memorandum is prepared in connection with the several bills before the committee. The first comments are on S. 1308. The special fund referred to in section 44 (a) of the Longshoremen's and Harbor Workers' Compensation Act was created to encourage the employment of disabled veterans and other handicapped persons. Compensation for additional disability attributable to preexisting injury is payable from the special fund and not by the immediate employer in the event of a second injury. The fund is also charged with the related expenses of vocational rehabilitation.

Presently the fund is supported by the payment of $1,000 in cases of death without dependents. S. 1308 would newly make this fund liable also for the satisfaction of judgments for compensation and for providing medical and surgical treatment in the case of an employer's insolvency or other circumstances precluding payment. The fund would likewise newly be charged with the cost of administering these provisions.

Inability of an employer to pay compensation claims would usually occur in the event he failed to insure his liability as required by the

act. Employers covered by this law are engaged in competitive enterprise. In those employments which are particularly hazardous, and stevedoring is one of these, the cost of providing insurance protection is a substantial item of operating costs.

Senator DOUGLAS. Mr. Starling, what is the average percentage charge on payrolls for insurance against workmen's compensation benefits for stevedoring concerns?

Mr. STARLING. Senator, I do not have those figures immediately available, but I can furnish them for the record.

Senator DOUGLAS. I would appreciate that, because that would indicate the relative cost of the system.

Mr. STARLING. I believe, sir, that I have already furnished some members of the staff with those figures, but I would be very happy to do it again. I had a telephone call at my office more or less recently from someone representing himself as from this committee, asking just those things, and I furnished them, but I would be glad to furnish them again.

Senator DOUGLAS. All members of the staff deny this. If anyone has been impersonating the committee staff, I will ask the sergeant at arms to get hold of him and bring him before the bar of this committee for judgment as to whether or not he is acting in contempt and impersonating Federal officials.

(Mr. Starling subsequently informed the subcommittee he had furnished the figures to another committee.)

Mr. STARLING. I would be very happy to supply the rates, Senator.

(The information referred to follows:)

ASSOCIATION OF CASUALTY AND SURETY COMPANIES,
New York 38, N. Y., June 27, 1955.

Senator DOUGLAS,
Chairman, Subcommittee on Labor,
Senate Committee on Labor and Public Welfare,
United States Capitol, Washington, D. C.

DEAR SENATOR DOUGLAS: In response to your request of me during the hearing on S. 1308 and S. 1646 on Friday, June 24, 1955, I enclose a schedule of the current rates for workmen's compensation insurance for "Stevedoring, not otherwise classified" (code 7309).

These rates are those promulgated by the National Council on Compensation Insurance for all States except California, Pennsylvania and Delaware. The rates specified are applied per $100 of payroll remuneration. The States included on the schedule are the coastal States and Illinois and Michigan.

It will be a pleasure to furnish the subcommittee any further information that it may desire.

Yours very truly,

HOWARD M. STARLING, *Manager.*

Current rates for workmen's compensation insurance, "Stevedoring, not otherwise classified"

Alabama	$2. 70	Mississippi	$10. 15
California	1. 53	New Hampshire	12. 92
Connecticut	8. 55	New Jersey	11. 10
Delaware	8. 50	New York	16. 00
District of Columbia	12. 38	North Carolina	7. 13
Florida	6. 18	Oregon	16. 10
Georgia	6. 60	Pennsylvania	6. 00
Illinois	9. 68	Rhode Island	14. 30
Louisiana	7. 84	South Carolina	6. 30
Maine	4. 73	Texas	11. 15
Maryland	9. 95	Virginia	3. 94
Massachusetts	12. 57	Washington	14. 03
Michigan	7. 71		

The employer who complies with the law and incurs such cost is already placed at a competitive disadvantage with respect to his law-evading competitor. It would be highly unfair to load him with the additional burden of paying compensation to the employees of such competitor. While such compensation would be payable from the special fund, the income of such funds is in effect derived from insured employers.

The special fund was created, and contributions to that fund have been made, for the benefit of disabled veterans and other handicapped persons. Diversion of the fund from such purposes should not be permitted, especially to guarantee the solvency of delinquent employers.

In our opinion enactment of this bill would be both unwise and unnecessary. The present compulsory provisions of the act require an employer to insure his liability for compensation. If stricter compliance with this provision is deemed necessary, this should be sought rather than to permit the use of the fund for purposes for which it was not intended. Knowledge that compensation would be paid regardless of the employer's compliance with the law might well render its enforcement less vigilant. Employees, for example, might be less likely to report violations, if compensation were payable in any event.

Likewise, the fund should not be used for administrative expenses. Such use is now specifically prohibited (sec. 39 (c), last sentence). If it is felt there is a surplus in the fund at the present time, reduction in contributions should be provided, rather than to seek means of dissipating these assets. If the fund were made liable for awards against delinquent employers, even a substantial surplus could readily be exhausted and acquisition of additional funds be made necessary. This would be particularly true if enforcement were relaxed. A single case of permanent total disability, including medical care, can easily cost $50,000 or more, at the present scale of benefits.

The bill may also in effect create indirectly a fund for the payment of awards against insolvent insurers. The bill provides for payment from the special fund where judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment. Such "other circumstances" may possibly be construed to be insolvency of the insurer. Under normal conditions insolvency of an insurer is traceable to unsound business practices. Employers who insure in sound companies and their insurers should not be required to underwrite the risks of those who operate on a speculative basis and engage in bad business practices. To permit persons engaging in such activities to escape the consequences of their acts would be an incentive to bad practice. It is undesirable to create a remedy which tends to breed the evil it is intended to cure.

Senator DOUGLAS. Let me see if I understand you. You say to permit persons engaged in such activities to escape the consequences of their acts would be an incentive to bad practice. Now, the people you are referring to are either the insurers or the insurance companies, isn't that true?

Mr. STARLING. That is correct, sir.

Senator DOUGLAS. They are not the ones who suffer, are they? The people who suffer would be the injured employees.

Mr. STARLING. That is correct, sir.

Senator DOUGLAS. So what you are saying is that you will punish the insurance companies by making it difficult for the injured employees. That is like punishing a man because some one who dislikes him has been at fault.

Mr. STARLING. That is not what I intended to say, sir.

Senator DOUGLAS. But I think that is the consequence of your logic.

Mr. STARLING. What I intended to say was that the employer who insures his liability under the law with a company which engages in bad practices, should be made to suffer, rather than the company who insures employers who are careful in the selection of their companies.

Senator DOUGLAS. This protection is put in, in part, so that those who suffer from double injury have a means of protection.

Mr. STARLING. That is correct, sir.

Senator DOUGLAS. I suggest that you reexamine your logic in this connection. Thank you very much.

Mr. STARLING. The Federal Government is presently engaged in endeavoring to eliminate activities in which it is competing with private enterprise. A guaranty or security fund would constitute a public fund for the payment of what are in effect private claims. Once constituted, it might readily be converted to more extensive application. The Government should curtail, not extend, activities which constitute a threat to business.

Senator DOUGLAS. Mr. Starling, I notice that you head that "A guaranty or security fund is socialistic."

Mr. STARLING. That is right.

Senator DOUGLAS. Now, S. 1308 is an administration bill, is it not?

Mr. STARLING. I was not aware that it was.

Senator DOUGLAS. Senator Smith of New Jersey introduced this as an administration bill, and the Under Secretary of Labor has testified that he supports that and I believe we have letters from the Secretary of Labor and the Bureau of the Budget saying that they do not object to it.

It would not be submitted for introduction unless the Bureau of the Budget approved of it. So what, in effect, you are doing is charging the Eisenhower administration with being socialistic. Now I have never made that charge myself, but it is interesting that you should make it.

Mr. STARLING. I think the Senator is putting a little broader application to my remarks than was intended. I am not accusing the Eisenhower administration of being socialistic. I am saying that this bill is.

Senator DOUGLAS. You say this bill is socialistic?

Mr. STARLING. That is right.

Senator DOUGLAS. Now, it is introduced by the administration, and therefore the administration is suggesting and endorsing something which in your opinion is socialistic.

Mr. STARLING. Then let the chips fall where they may.

Senator DOUGLAS. I just wanted to bring that out.

Mr. STARLING. My next comment——

Senator DOUGLAS. I want to make it clear that I do not join in this charge. I want to defend the Eisenhower administration from this charge, and say in my opinion it is not socialistic. I have the Budget

Bureau letter under date of April 14, signed by Donald R. Belcher, Assistant Director.

I am authorized to advise you that the enactment of Senate 1308 would be in accord with the program of the President.

So if you say this is socialistic, and the Director of the Bureau of the Budget says this is in accord with the program of the President, you are saying that the program of the President is socialistic. Things equal to the same thing are equal to each other.

Mr. STARLING. I still say let the chips fall where they may, sir.

Senator DOUGLAS. I congratulate you on your honesty.

Mr. STARLING. My next comments are on Senate 1646. This bill would in part amend section 6 (a) of the Longshoremen's and Harbor Workers' Compensation Act, relating to the time to being payment of compensation, by reducing the waiting period from 7 to 3 days and the reversionary period from 49 to 14 days.

The purpose of a waiting period is to avoid the payment of compensation for trivial injuries which cause brief loss of time and do not seriously affect the employee's earnings. The administrative cost of handling claims involving short periods of disability are such as to far outweigh any monetary benefit to the employee. Minor injuries are more numerous than serious ones. Payment of compensation in such cases adds considerably to the cost without commensurate benefit to the recipient. An adequate waiting period serves to check the inclination, common to all humanity, to lay off after a trifling injury if it can be done without too much sacrifice in income.

The workmen's compensation laws of most States provide for a 7-day waiting period. Such a period seems reasonable. A 3-day waiting period not only makes compensable cases where disability is less than 7 days but over 3, but also is an inducement to stretch out a disability of less than 3 days in order to receive some compensation. It may be noted that in stevedoring operations employment often is not continuous. A reduction in the waiting period would make it easier to collect compensation for temporary layoffs not attributable to injuries.

Where disability extends over a considerable period of time the reasons for having a waiting period become no longer applicable. A number of workmen's compensation laws therefore provide that in the event disability extends over a specified period of time, compensation becomes payable for the waiting period. This is often referred to as a reversionary or retroactive period. However, in order for a reversionary period to operate properly, it should be of sufficient length to avoid the possibility that return to work is delayed merely to receive an additional week's compensation. The longer the reversionary period, the less is this likely to happen.

With a 14-day reversionary period, under the present law, an employee would receive double his compensation for absenting himself from work 1 additional day beyond 2 weeks. Even if the waiting period were reduced as provided in the bill, his compensation would be increased by approximately one-half. The inducement to take off one additional day will be very strong. This would not indicate clear malingering, but it is very easy to feel that an additional day of rest would be beneficial especially when it would be so well remunerated. Disabilities lasting 2 weeks are common so that in all these

cases there would be the very strong temptation to stay away from work 1 or 2 additional days to get double or at least one-half more compensation. Some States do not provide a reversionary period. Of those that do, most specify a period of 4 weeks or more. In New York the period is 35 days.

Reduction of the reversionary period to 14 days would not only create an unhealthful moral problem and increase the cost of compensation, but would also encourage employees to lose time from work they otherwise would not have lost.

We respectfully urge, therefore, that S. 1308 do not have your support and that the provisions of S. 1646 be amended to eliminate the reduction in the waiting period and the reversionary period.

I thank you very much, Senator.

Senator DOUGLAS. Thank you very much, Mr. Starling. I notice that you address your objections to S. 1646 on the reduction in the waiting period and the reversionary period. As you are aware, S. 1646 also provides for raising the maximum from $35 a week to $50 a week. What is your position on that? You are silent in your statement about it.

Mr. STARLING. Representing the insurance companies we take no position with reference to increase in benefits because that is something that does not cost the insurance companies anything. The employer pays that. We feel that——

Senator DOUGLAS. It means more business to you, doesn't it?

Mr. STARLING. I wouldn't say that, sir; that it means more business.

Senator DOUGLAS. You take no stand on that?

Mr. STARLING. No; we are not opposed to the increase in the benefits.

Senator DOUGLAS. And the same position applies on increasing the minimum?

Mr. STARLING. That is correct, sir.

Senator DOUGLAS. And you take no position on the scheduled benefits for permanent partial disability in case of amputations?

Mr. STARLING. We have no objection, sir.

Senator DOUGLAS. Thank you very much.

Mr. STARLING. You are indeed welcome, sir.

Senator DOUGLAS. The next witness is Mr. Andrew R. Martinez, counsel of the New Orleans Steamship Association.

STATEMENT OF ANDREW R. MARTINEZ, COUNSEL OF THE NEW ORLEANS STEAMSHIP ASSOCIATION, NEW ORLEANS, LA.

Mr. MARTINEZ. I am Andrew R. Martinez, attorney, New Orleans, La. I am a member of the firm of Terriberry, Young, Rault & Carroll, who are, and I am as a member of the firm, general counsel for the New Orleans Steamship Association, composed of owners, operators, and agents of 90 percent of the deep-sea steamship business in New Orleans.

Senator DOUGLAS. Does that include the United Fruit Lines and the Grace Lines?

Mr. MARTINEZ. As the agents, their representatives are in the association. We can truthfully say that we represent 90 percent of all of the deep-sea steamship business in New Orleans.

In addition to that, I have been requested to appear on behalf of the Tampa Maritime Association, Galveston Maritime Association, the Houston Maritime Association, Mobile Steamship Association, Inc., Pensacola Steamship Association, Sabine District Maritime Association, that being in Texas.

As a result of these representations I think that I can conservatively say that I am here representing by far the majority of all of the steamship business within the gulf area.

At their request I have been asked to appear here and enter their opposition to the provisions of S. 1646 and S. 594. I don't know whether that is up also.

Senator DOUGLAS. Yes, those are the Morse and Magnuson bills and they have been consolidated now into S. 2280.

Mr. MARTINEZ. I just learned of that.

At the outset I want to state that we were called in so late, the notice was so short that we were unable to prepare a written statement.

Senator DOUGLAS. I may say that the subcommittee has had difficulty in fixing dates for these hearings because of other hearings in which the chairman has been engaged, so that we were altering the dates from day to day and we were unable to give as long advance notice as we would have desired. There was no intent to put any one at a disadvantage, but simply that the Senate Calendar kept shifting and the chairman was engaged in a number of matters so the hearings were postponed.

Mr. MARTINEZ. Under those circumstances, we request that we be given a reasonable time within which to submit and file with the committee a written statement.

Senator DOUGLAS. That is very proper and we are very glad to do that. I can assure you it will be very carefully studied, too.

Mr. MARTINEZ. Therefore, I want to preface my statement——

Senator DOUGLAS. For the record, the clerk of the committee informs me that invitations were extended to you on the 17th of June.

Mr. MARTINEZ. They may have been extended, but as I say, my request for appearance, and as a matter of fact certain of these appearances that I have enumerated have just come in before I left New Orleans yesterday. I assume we will be notified of the amount of time that I will be given because there is some statistical information to be submitted.

Senator DOUGLAS. Would 10 days be sufficient?

Mr. MARTINEZ. I would suggest 2 weeks.

Senator DOUGLAS. We are nearing the end of the session, and we would appreciate it if you could get your material in in 10 days.

(The following telegram was received in lieu of the statistical information referred to:)

NEW ORLEANS, LA., *June 29, 1955.*

STEWART E. MCCLURE,
Staff Director, Senate Committee on Labor and Public Welfare,
United States Senate, Washington, D. C.

Investigation at New Orleans and other gulf ports discloses it is not possible in limited time available to obtain additional statistical data that we had planned submitting to your committee in the form of a memorandum supplementing the presentation made on behalf of ourselves and the shipping associations at the ports of Tampa, Pensacola, Mobile, Houston, Galveston, and Sabine last Friday before the subcommittee by our attorney, Andred R. Martinez, in opposition to various bills proposing to increase benefits under Federal Longshoremen's

and Harbor Workers' Act. We and the above-named ports accordingly will not file such memorandum but will rely on the presentation aforesaid including the statistical exhibits introduced and made part of the record during the testimony of Mr. Martinez. We reaffirm our conviction that the present Federal act is basically just and equitable both to labor and industry. Our exhibit chart IIA shows that the average maximum weekly payment for permanent total and temporary total disability for the 28 States composing the Atlantic, Gulf, and Pacific Coast States and the Great Lakes States is $32.78. Thus the present Federal maximum weekly payment of $35 is higher than the standard set by the composite judgment of 28 State legislatures each having knowledge of their own local waterfront and labor conditions. We strongly urge that this standard should be accepted by the Congress in fixing the maximum weekly payments under the Federal act and that accordingly there is not adequate justification presently for increasing this maximum. Similarly our chart IA shows that the average maximum weekly payment to widows provided by the same 28 States is $27.42 which must be compared with the present Federal act figure of $52.50. Any increase above the present liberal provisions of the Federal act we submit is likewise not justified. We again reaffirm our position that the present minimums under the Federal act are shown by a similar comparison with the average of the 28 States to be satisfactory and that they should not be disturbed. We request that this telegram be made part of our presentation before the committee and incorporated in the record. We all appreciate the opportunity of appearing before the subcommittee and presenting our position.

NEW ORLEANS STEAMSHIP ASSOCIATION,
E. J. MCGUIRK, *President.*

Mr. MARTINEZ. Therefore, I can only briefly touch upon the subjects which at this time influenced us in entering this opposition. I want to say at the outset that all of the interests that I represent are of the united opinion that injured longshoremen and their families should receive proper protection under the Longshoremen's and Harbor Workers' Act, although they feel and it is their belief that the provisions that now exist under the Longshoremen's and Harbor Workers' Act are adequate, reasonable, and fair both to the employees and their families, as well as the employer.

Bearing in mind that workmen's compensation statutes which came into existence before the Longshoremen's and Harbor Workers' Act and the Longshoremen's Act itself, are not intended to guarantee any fixed reimbursement of loss of wages, but provide for an award in a fair and reasonable amount for the care of the injured man and his family in the event of death.

The reason for that is that both the employer and the employee made certain sacrifices and significant sacrifices such as the employer gives up his right of defenses in the event of litigation for indemnity as contributory negligence, or fellow servant doctrine, and so forth.

The industry in order to expedite the taking care of the injured man has to furnish medical attention and give him reasonably punctually the stated compensation benefits. The employee on the other hand foregoes the right to claim indemnity based on negligence and thereby eliminate long and prolonged litigation.

They feel that in determining the benefits under these provisions of the Longshoremen's Act in considering what is or what is not fair compensation to the injured man and his family, the particular provisions of any one State with respect to the maximum to be allowed, or the minimum that is to be allowed, both in death cases or permanent or partial disability cases, should not be taken on that basis but they should take the broad overall average of those States which employ the greater portion of longshore labor should be adopted.

64677—55——5

With that in mind, we have in this short period of time prepared an analysis, showing all of the comparable benefits of the entire United States and have extracted therefrom all of the benefits provided under the coastal and Great Lakes area and have compared them with the averages of the United States and the averages of these particular 28 States with the present and proposed benefits under the Longshoremen's Act.

I have these, and, if the chairman desires, at this time I would be glad to leave these with you.

Senator DOUGLAS. We would like to have one for the record, and one for Senator Kennedy and myself.

Would you like to have this made a part of the record?

Mr. MARTINEZ. Yes, sir.

Senator DOUGLAS. We will make this a part of the record at this point.

Mr. MARTINEZ. I would like to have it made a part of the record, and probably in the written memorandum that I will be required to file.

Senator DOUGLAS. We don't require you to file it.

Mr. MARTINEZ. I mean that I desire to file. I will attach that to it.

(Material submitted by Mr. Martinez follows:)

CHART I

WORKMEN'S COMPENSATION—FATAL INJURIES

Benefits for widows and children—Jan. 1, 1954

Jurisdiction	Maximum period [1] (weeks)	Maximum per week		Maximum amounts [2]		Minimum per week, widow only	Percentage of wage		
		Widow only	Widow plus children	Widow only	Widow plus children		Maximum	Widow only	1 child only
Alabama	300	$23.00	$23.00	$6,900.00	$6,900.00	[3] $5.00	65	35	35
Alaska	[4]	[5]	[5]	9,000.00	15,000.00	[5]			
Arizona	[4]	[6] 80.77	[6] 153.69	[7]	[7]		66⅔	35	25
Arkansas	450	25.00	25.00	8,000.00	8,000.00	7.00	65	35	50
California	[4]	35.00	43.75	7,000.00	8,750.00	9.75	61.75	61.75	61.75
Colorado	[8] 312	29.75	29.75	9,311.75	9,311.75	10.00	66⅔	66⅔	66⅔
Connecticut	[9] 780	40.00	40.00	31,200.00		12.00	60	60	60
Delaware	[9] 312	15.00	32.50	4,680.00		10.00	65	30	30
District of Columbia	[4]	18.38	35.00	[7]	[7]	6.30	66⅔	35	35
Florida	350	35.00	35.00	12,250.00	12,250.00	[3] 8.00	60	35	35
Georgia [10]	300	20.40	20.40	6,120.00	6,120.00		[11]	[11]	[11]
Hawaii	[4 12]	26.25	35.00	[13] 10,500.00	[13] 10,500.00	8.00	66⅔	50	30
Idaho	[9] 400	20.00	25.00	8,000.00	10,000.00	10.00	55	45	25
Illinois [14]	[4]	29.00	38.00	8,000.00	10,750.00	14.25	75	75	75
Indiana	350	30.00	30.00	10,000.00	10,000.00	15.00	60	60	60
Iowa [10]	300	28.00	28.00	8,400.00	8,400.00	[3] 12.00	66⅔	66⅔	66⅔
Kansas	[4]	28.00	28.00	9,000.00	9,000.00				
Kentucky	400	26.00	26.00	9,500.00	9,500.00	7.00	65	65	65
Louisiana	300	30.00	30.00	9,000.00	9,000.00	[3] 3.00	65	32½	32½
Maine	[15] 300	27.00	27.00	8,000.00	8,000.00	15.00	66⅔	66⅔	66⅔
Maryland	500	25.00	25.00	10,000.00	10,000.00	[3] 15.00	66⅔	66⅔	66⅔
Massachusetts	[9] 400	20.00	[16]	[17] 8,000.00	[17] 10,000.00	20.00			
Michigan	400	28.00	36.00	11,200.00	14,400.00	14.00	66⅔	66⅔	66⅔
Minnesota	[4]	35.00	35.00	10,000.00	[18] 10,000.00	17.50	66⅔	40	45
Mississippi	450	25.00	25.00	8,600.00	8,600.00	10.00	66⅔	35	25
Missouri	[4]	35.00	35.00	12,000.00	12,000.00	16.00	66⅔	66⅔	66⅔
Montana	500	24.50	30.50	12,250.00	15,250.00	17.50	66⅔	50	50
Nebraska	325	28.00	28.00	9,100.00	9,100.00	[3] 17.00	66⅔	66⅔	66⅔
Nevada	[4]	23.33	37.33	[7]	[7]		90	50	30
New Hampshire	319	33.00	33.00	10,500.00	10,500.00	18.00	66⅔	66⅔	66⅔
New Jersey [10]	[9] 300	30.00	30.00	9,000.00		10.00	60	35	35
New Mexico	550	30.00	30.00	16,500.00	16,500.00	17.00	60	40	25
New York [19]	[4]	21.00	35.00	[7]	[7]	5.00	66⅔	40	30
North Carolina	350	30.00	30.00	8,000.00	8,000.00	8.00	60	60	60
North Dakota	[4]	18.00	30.00	[7]	[7]	13.50	75	45	25
Ohio	416	32.20	32.20	9,000.00	9,000.00		66⅔	66⅔	66⅔
Oklahoma	[20]				[21] 13,500.00				
Oregon	[4]	18.46	39.23	[7]	[7]	18.46			
Pennsylvania	[9] 350	20.50	32.50	7,175.00		15.05	66⅔	51	32
Rhode Island	600	16.00	20.00	9,600.00	12,000.00	12.00	60	60	60
South Carolina	350	35.00	35.00	8,000.00	8,000.00	5.00	60	60	60
South Dakota	[4]	[7]	[7]	9,000.00	9,000.00				
Tennessee	400	28.00	28.00	8,500.00	8,500.00	[3] 12.00	60	35	35
Texas	360	25.00	25.00	9,000.00	9,000.00	9.00	60	60	60
Utah	312	27.50	[22]	8,000.00	9,781.25		60	60	60
Vermont	260	25.00	25.00	6,500.00	6,500.00	12.00	50	40	45
Virginia	300	25.00	25.00	7,500.00	7,500.00	6.00	60	60	60
Washington	[4]	23.07	[23] 40.38	[7]	[7]	23.07			
West Virginia	[4]	13.85	[24]	[7]	[7]	13.85			
Wisconsin [25]	[26] 1,000	30.00	30.00	[27]	[27]	10.00	[28] 50	[28] 50	[28] 50
Wyoming	[4]	20.77	[29]	6,000.00	12,350.00	20.77			
Federal Employees' Compensation Act	[4]	121.00	121.00	[7]	[7]	15.60	75	45	35
Longshoremen and Harbor Workers' Act	[4]	18.38	35.00	[7]	[7]	6.30	66⅔	35	35
Alberta	[4]	11.54	[30]	[7]	[7]	11.54			
British Columbia	[4]	17.31	[31]	[7]	[7]	17.31			
Manitoba	[4]	11.54	40.38	[7]	[7]	11.54	66⅔	66⅔	66⅔
New Brunswick	[4]	11.54	38.46	[7]	[7]	11.54	66⅔	66⅔	66⅔
Newfoundland	[4]	11.54	[32] 38.46	[7]	[7]	11.54	66⅔	66⅔	66⅔
Nova Scotia	[4]	11.54	30.00	[7]	[7]	11.54	66⅔	66⅔	66⅔
Ontario	[4]	17.31	76.92	[7]	[7]	17.31	100	100	100
Prince Edward Island	[4]	11.54	23.07	[7]	[7]	11.54	75	75	75
Quebec	[4]	10.38	40.38	[7]	[7]	10.38	70	70	70
Saskatchewan	[4]	13.84	[33] 76.92	[7]	[7]	13.84	100	100	100
Canadian Merchant Seamen Compensation Act	[4]	11.54	[34] 46.15	[7]	[7]	11.54	66⅔	66⅔	66⅔

See footnotes on p. 64.

Benefits for widows and children—Jan. 1, 1954—Continued

Source: Analysis of Workmen's Compensation Laws.

Published by the Chamber of Commerce of the United States, Washington, D. C.

[1] Benefits are generally payable to the widow until remarriage and to children until specified age, but not in excess of amounts stated in law. A few laws provide lump sums payable to widow upon remarriage. In some jurisdictions benefits continue for a longer period where there are children or incapacitated dependents.
[2] Total maximum payments computed where not stipulated by law. Disability payments deducted in all laws except those of Arizona, Arkansas, California, Delaware, District of Columbia, Federal Employees' Compensation Act, Longshoremen's Act, Michigan, Mississippi, Missouri, Nevada, New York, North Dakota, Oregon, Washington, West Virginia, Wisconsin, Wyoming.
[3] Actual wage, if less. (Some States have minimum regardless of wage—Examples, Massachusetts and Tennessee.)
[4] Not specified.
[5] As Industrial Board may determine.
[6] In computing average monthly wage, all wages in excess of $1,000 per month excluded.
[7] No limit.
[8] Not applicable where there are partially dependent persons.
[9] Thereafter to children until specified age.
[10] Covers reasonable expenses of last illness in certain cases.
[11] 85 percent of compensation for total disability.
[12] If a widower, during disability or until remarriage. If a dependent child, not to exceed 104 weeks beyond age 18.
[13] Aggregate of disability and death benefits.
[14] Maximum and minimum weekly amounts increased to $38 and $26.60, respectively, based on number of children. Percentage from 75 to 97½.
[15] From date of accident.
[16] Add $5 for each dependent child (no limit). Certain exceptions for children under 18 and mentally incapacitated children, and unremarried widows. Payments made before death are not included in maximum.
[17] May receive additional sums if not fully self-supporting.
[18] Thereafter compensation from special fund, maximum $20 weekly until youngest child is 18 or total additional payments amount to $2,500.
[19] Maximum wages computed on $277.50 per month.
[20] Pay in single sum.
[21] Single payment of sum to heirs at law.
[22] $27.50 for widow plus 5 percent for each dependent child, up to 5 such children.
[23] $5.75 first child, $4.61 second child, $2.31 each additional child, with maximum for widow and children $40.38 per week.
[24] $13.85 for widow and $3.46 for each child ($4.62 if child is invalid).
[25] In cases where there are no dependents employers may be required to pay to State treasury up to $4,000.
[26] Based on age under 50, reducing as age increases. Maximum reduction 50 percent.
[27] Aggregate 4 times average annual earnings, not to exceed 70 percent of weekly wage for maximum period. Additional compensation for children, based on age. 1 year or under, 1½ times average annual earnings, with successive age groups reduced ⅛ to age 18. Aggregate for children 4 times average annual wage, to accrue at rate of 13 percent of surviving parent's indemnity.
[28] Aggregate amount calculated on basis of 70 percent of average annual wage. Weekly installments payable 50 percent of average weekly wage.
[29] $20.77 for widow plus $4.85 for each child.
[30] $11.54 for widow plus $5.76 for each child. Additional amount if attending school. Special award on account of illness.
[31] $4.62 for each child under 16 or 18 if attending school. If invalid, payment continued to recovery.
[32] $3.46 for each child under 18.
[33] Additional amount payable $5.76 for each child.
[34] Additional amount for each child, $2.30.

Chart I

Adjustments During 1954

Changes were made by the legislatures in four States and by the government of the Province of Quebec:

MICHIGAN

Maximum per week for widow only increased to $32.
Maximum per week for widow plus children increased to $40.
Maximum amount for widow only increased to $12,000.
Maximum amount for widow plus children increased to $16,000.
Minimum per week for widow only increased to $18.

NEW YORK

Maximum per week for widow only increased to $24.
Maximum per week for widow plus children increased to $40.

RHODE ISLAND

Maximum per week for widow only increased to $18.
Maximum amount for widow only increased to $10,800.
Minimum per week for widow only increased to $16.

VIRGINIA

Maximum per week for widow only increased to $27.
Maximum per week for widow plus children increased to $27.
Maximum amount for widow only increased to $8,100.
Maximum amount for widow plus children increased to $8,100.

PROVINCE OF QUEBEC

Maximum per week for widow only increased to $12.69.
Maximum per week for widow plus children increased to $53.85.
Minimum per week for widow only increased to $12.69.

WORKMEN'S COMPENSATION BENEFITS FOR WIDOWS (28 STATES)
CHART I–A

Coastal and Great Lakes States, Dec. 31, 1954

	Maximum per week, widow only	Minimum per week, widow only
1. Atlantic Coastal States:		
Maine	$27.00	$15.00
New Hampshire	33.00	18.00
Massachusetts	20.00	20.00
Rhode Island	18 00	16.00
Connecticut	40 00	12.00
New York	24.00	5 00
New Jersey	30.00	10 00
Pennsylvania	20.50	15.05
Maryland	25.00	15.00
Delaware	15.00	10.00
Virginia	27.00	6.00
North Carolina	30.00	8.00
South Carolina	35.00	5.00
Georgia	20.40	----------
Average	26.06	11.93
2. Gulf States:		
Florida	35.00	8.00
Alabama	23.00	5.00
Mississippi	25.00	10.00
Louisiana	30.00	3.00
Texas	25.00	9.00
Average	27.60	7.00
3. Pacific Coastal States:		
California	35.00	9.75
Oregon	18.46	18.46
Washington	23.07	23.07
Average	25.51	17.09
4. Great Lakes States:		
Minnesota	35.00	17.50
Wisconsin	30.00	10.00
Michigan	32.00	18.00
Illinois	29.00	14.25
Indiana	30.00	15.00
Ohio	32.20	----------
Average	31.37	14.95
5. Coastal and Great Lakes average (28 States)	27.42	12.16
6. United States average (48 States)	27.58	12.29
7. Federal Longshoremen's and Harbor Workers' Act:		
Present	52.50	18.00
Proposed	75.00	30.00

Source: Analysis of Workmen's Compensation Laws published by the Chamber of Commerce of the United States, Washington, D. C.

CHART II

Workmen's compensation benefits for permanent and temporary total disabilities, Jan. 1, 1954

Jurisdiction	Limitations on permanent total					Limitations on temporary total					Notations
	Maximum percent of wages	Maximum weekly payment	Minimum weekly payment	Time limit	Amount limit	Maximum percent of wages	Maximum weekly payment	Minimum weekly payment	Time limit	Amount limit	
Alabama	[2] 65	$23.00	[3] $5.00	550 weeks [4]	$9,200.00	[2] 65	$23.00	[3] $5.00	300 weeks	$6,900	Defined permanent total disability. Disfigurement benefits to 100 weeks.
Alaska	[5]	[5]	[5]	None	[6] 15,000.00	65	75.00	[7]	104 weeks	[8] 25,000	Disfigurement limits $4,000.
Arizona	65	[9] 150.00		Life		65	150.00		433 weeks	65,000	
Arkansas	65	25.00	7.00	450 weeks	8,000.00	65	25.00	7.00	450 weeks	8,000	
California	61¾	30.00	9.75	Life [1]		61¾	35.00	9.75	240 weeks	8,400	40 percent after 400 weeks.
Colorado	50	29.75	10.00	do.[1]	9,311.75	66⅔	29.75	10.00	Disability		Lump-sum maximum, $9,311.75.
Connecticut	60	40.00	12.00	do		60	40.00	12.00	do		
Delaware	60	30.00	[3] 15.00	do		60	30.00	15.00	do		
District of Columbia	66⅔	35.00	12.00	do		66⅔	35.00	12.00	do	11,000	
Florida	60	35.00	[3] 8.00	700 weeks		60	35.00	[3] 8.00	350 weeks		
Georgia	50	24.00	[3] 7.00	350 weeks	8,400.00	50	24.00	[3] 7.00	do	8,400	
Hawaii	66⅔	[1] 35.00	[1] 8.00	Life	[10] 10,500.00	66⅔	35.00	[3] 8.00	Disability	10,500	Director may order payment of $50 per month for attendant, to be paid from special fund.
Idaho	60	[1] 23.00	[1] 10.00	do.[10]		60	[1] 23.00	[1] 10.00	do.[11]		Maximum $28 with dependent spouse. Add $3 each child; maximum, $40.
Illinois [12]	75	29.00	14.25	do	(1)	[1] 75	29.00	14.25	do	(1)	Limited to amount would receive if accident had resulted in death. Life pension thereafter.
Indiana	60	30.00	[3] 15.00	500 weeks	10,000.00	60	30.00	[3] 15.00	500 weeks	10,000	
Iowa	66⅔	28.00	[3] 12.00	do	14,000.00	66⅔	28.00	[3] 12.00	300 weeks	8,400	
Kansas	60	28.00	7.00	416 weeks	11,648.00	60	28.00	7.00	416 weeks	11,648	
Kentucky	65	27.00	7.00	520 weeks	11,500.00	65	27.00	7.00	520 weeks	11,500	Disfigurement benefits allowed.
Louisiana	65	30.00	[3] 3.00	400 weeks	12,000.00	65	30.00	[3] 3.00	300 weeks	9,000	
Maine	66⅔	27.00	15.00	500 weeks	10,500.00	66⅔	27.00	15.00	500 weeks	10,500	
Maryland	66⅔	35.00	[3] 15.00	Life	12,500.00	66⅔	32.00	[3] 15.00	312 weeks	5,000	Do.
Massachusetts	66⅔	30.00	[13] 18.00	do		66⅔	30.00	[13] 18.00	Disability	10,000	$2.50 additional each dependent.
Michigan	66⅔	[1] 38.00	14.00	800 weeks	30,400.00	66⅔	[1] 38.00	14.00	500 weeks	19,000	Reducing schedule if less than 5 dependents.
Minnesota [15]	66⅔	35.06	17.50	Life	(14)	66⅔	35.00	17.50	310 weeks	10,850	Additional $5,000 allowable in certain cases. Disfigurement benefits.
Mississippi	66⅔	25.00	[1] 10.00	450 weeks [16]	[16] 8,600.00	66⅔	25.00	[1] 10.00	450 weeks [16]	[16] 8,600	$7 in partially dependent cases. Maximum $2,000 disfigurement benefit.
Missouri [17]	[1] 66⅔	35.00	16.00	300 weeks [18]		66⅔	35.00	[3] 16.00	400 weeks	14,000	25 percent after 300 weeks.
Montana	66⅔	[1] 30.50	17.50	500 weeks	15,250.00	66⅔	[1] 30.50	17.50	300 weeks	9,150	Reducing schedule if less than 5 children.

Nebraska	[1] 66⅔	[1] 28.00	[3] 17.00	Life [19]		[1] 66⅔	[1] 28.00	[3] 17.00	do.[19]		45 percent after 300 weeks, maximum $22, minimum $15 (or actual wage if less).
Nevada	80	18.66	11.66	do		80	[20] 38.50	[20] 28.50	433⅓ weeks	16,500	Additional allowance for constant attendant if necessary, $50 a month.
New Hampshire	66⅔	33.00	18.00	319 weeks	10,500.00	66⅔	33.00	10.00	319 weeks	10,500	$15 for each schedule injury to 2d injury fund.
New Jersey	66⅔	[1] 30.00	10.00	450 weeks [1]		66⅔	30.00	10.00	300 weeks	9,000	After 450 weeks at reduced rate for employees undergoing vocational rehabilitation.
New Mexico [1]	60	30.00	[3] 17.00	550 weeks	16,500.00	60	30.00	[3] 17.00	550 weeks	16,500	50 percent additional compensation payable by employer for failure to provide safety devices.
New York	66⅔	32.00	[3] 15.00	Life		66⅔	32.00	[3] 12.00	Disability	6,500	Additional compensation for vocational rehabilitation.
North Carolina	60	30.00	8.00	400 weeks [1]	[1] 8,000.00	60	30.00	8.00	400 weeks	8,000	Life in some cases without limit.
North Dakota	80	45.50	[3] 15.00	Life		80	45.50	[3] 15.00	Disability		$31.50 plus $2.80 for each child under 18. Maximum $45.50 per week.[21]
Ohio	66⅔	32.20	[3] 10.00	do		66⅔	32.20	10.00	312 weeks	6,000	
Oklahoma	66⅔	28.00	[3] 15.00	500 weeks	14,000.00	66⅔	28.00	[3] 15.00	300 weeks	8,400	
Oregon		[1] 51.92	18.46	Life		66⅔	[1] 45.00	20.77	Disability		Reducing schedule if less than 4 children.
Pennsylvania	66⅔	32.50	[22] 22.50	700 weeks	20,000.00	66⅔	32.50	[22] 22.50	700 weeks	20,000	
Rhode Island [23]	60	28.00	15.00	1,000 weeks	14,000.00	60	28.00	15.00	1,000 weeks	14,000	
South Carolina	60	35.00	5.00	500 weeks	8,000.00	60	35.00	5.00	500 weeks	8,000	
South Dakota	55	28.00	[3] 12.00	Life [1]	9,000.00	55	28.00	[3] 12.00	312 weeks	8,736	After 300 weeks, maximum $12 per week. Minimum $10.
Tennessee	60	28.00	[24] 12.00	550 weeks [1 16]	8,500.00	60	28.00	[24] 12.00	300 weeks	8,400	After 400 weeks $12 per week (or actual wage if less, but not less than $10).
Texas	60	25.00	9.00	401 weeks	10,025.00	60	25.00	9.00	401 weeks	10,025	Special provisions for occupational disease.
Utah	[1] 60	[25] 27.50	17.50	Life [1 26]	11,000.00	60	[25] 27.50	17.50	312 weeks	9,750	After 260 weeks—45 percent plus 5 percent for each child (not to exceed 25 percent).
Vermont	50	[27] 25.00	[3] 12.00	260 weeks	6,500.00	50	[27] 25.00	[3] 12.00	260 weeks	6,500	
Virginia	60	25.00	6.00	500 weeks	10,000.00	60	25.00	6.00	500 weeks	10,000	
Washington		[1] 46.15	23.07	Life			[1] 42.69	23.07	Disability		Additional allowance for constant attendant, if necessary, $50 per month. Reducing schedule if less than 5 children.
West Virginia	66⅔	30.00	18.00	do		66⅔	30.00	18.00	208 weeks	6,240	
Wisconsin	70	42.00	14.00	do		70	42.00	8.75	Disability		Additional compensation for vocational rehabilitation.
Wyoming		([1])	21.23	do	13,850.00		[1 28] 43.85	23.08	do		Permanent—$27.69 plus $4.85 for each child (no limit).[29]
Federal Employees' Compensation Act.	75	[1] 121.00	[3] 26.00	do		75	[1] 121.00	[3] 26.00	do		Additional allowance of $75 per month for constant attendant if necessary.
Longshoremen and Harbor Workers' Act.	66⅔	35.00	[3] 12.00	do		66⅔	35.00	[3] 12.00	do	11,000	

See footnotes at end of table, p. 68.

CHART II—Continued

Workmen's compensation benefits for permanent and temporary total disabilities, Jan. 1, 1954—Continued

Jurisdiction	Limitations on permanent total					Limitations on temporary total					Notations
	Maximum percent of wages	Maximum weekly payment	Minimum weekly payment	Time limit	Amount limit	Maximum percent of wages	Maximum weekly payment	Minimum weekly payment	Time limit	Amount limit	
Alberta	75	$43.26	[3] $25.00	Life		75	$43.26	[3] 25.00	Disability		
British Columbia	70	48.45	[3] 15.00	do		70	48.45	[3] 12.50	do		
Manitoba	70	40.38	[3] 15.00	do		70	40.38	[3] 15.00	do		
New Brunswick	66⅔	38.46		do		66⅔	38.46	[3] 15.00	do		
Newfoundland	66⅔	38.46	[3] 15.00	do		66⅔	38.46	[3] 15.00	do		
Nova Scotia	66⅔	38.46	19.62	do		66⅔	38.46	[3] 15.00	do		
Ontario	75	57.69	[3] 23.10	do		75	57.69	[3] 15.00	do		
Prince Edward Island	75	36.06	[3] 15.00	do		75	36.06	[3] 15.00	do		
Quebec	70	40.38	[3] 15.00	do		70	40.38	[3] 15.00	do		
Saskatchewan	75	57.69	[3] 20.00	do		75	57.69	[3] 15.00	do		
Canadian Merchant Seamen Compensation Act.	66⅔	32.00	12.50	do		66⅔	32.00	12.50	do		

[1] See notations column.
[2] Percentage increased 5 percent each, for dependent wife and children. Maximum 65 percent, wife and children.
[3] Actual wage if less.
[4] For specified injuries—others limited to 400 weeks.
[5] As industrial board may provide.
[6] Single, $12,000; married, $14,400; $1,800 for each child under 18.
[7] Not specified.
[8] $25,000 is overall limit for injury and/or death.
[9] No actual limit in computing average monthly wage. All wages in excess of $1,000 per month excluded.
[10] Reduced compensation thereafter from special fund.
[11] Only 400 weeks at maximum disability, reduced thereafter.
[12] See note 17, chart 1.
[13] Actual wage if less, but not under $10 for workweek of 15 hours or over.
[14] Old-age and survivors insurance benefits credited on compensation after $18,000 has been paid.
[15] Additional compensation (not to exceed $2,500) for successive injuries.
[16] Whichever is less.
[17] Not to exceed $1,000 additional for disfigurement.
[18] 25 percent thereafter but not less than $16 or more than $18.
[19] Reduced amounts after 300 weeks.
[20] Or percentage of wage, whichever is less.
[21] May exceed actual wage if minimum wage applied.
[22] Actual wage if less, but in no case less than $12.50.
[23] Disability extending beyond maximum period compensated. Employers and insurers reimbursed from second injury fund.
[24] Actual wage if less but in no case less than $10.
[25] 5 percent additional for each dependent child under 18 years, not to exceed 5.
[26] 260 weeks; thereafter reduced.
[27] Additional amount of $2 per week for each dependent child under 21.
[28] Schedule of benefits by number of dependents.
[29] Court will supervise disbursement of fund for children.

Source: Analysis of Workmen's Compensation Laws.
Published by: The Chamber of Commerce of the United States, Washington, D. C.

CHART II

ADJUSTMENTS DURING 1954

Changes were made by the legislatures in 5 States and by the government of the Provinces of British Columbia and Quebec:

COLORADO

Limitations on permanent total: Maximum percent of wages increased to 66⅔ percent.

MICHIGAN

Limitations on permanent total:
- Maximum weekly payment increased to $42.
- Minimum weekly payment increased to $18.
- Amount limit increased to $33,600.

Limitations on temporary total:
- Maximum weekly payment increased to $42.
- Minimum weekly payment increased to $18.
- Amount limit increased to $21,000.

NEW YORK

Limitations on permanent total: Maximum weekly payment increased to $36.
Limitations on temporary total: Maximum weekly payment increased to $36.

RHODE ISLAND

Limitations on permanent total:
- Maximum weekly payment increased to $32.
- Minimum weekly payment increased to $17.
- Amount limit increased to $16,000.

Limitations on temporary total:
- Maximum weekly payment increased to $32.
- Minimum weekly payment increased to $17.
- Amount limit increased to $16,000.

VIRGINIA

Limitations on permanent total:
- Maximum weekly payment increased to $27.
- Amount limit increased to $10,800.

Limitations on temporary total:
- Maximum weekly payment increased to $27.
- Amount limit increased to $10,800.

PROVINCE OF BRITISH COLUMBIA

Limitations on permanent total:
- Maximum percent of wages increased to 75 percent.
- Maximum weekly payment increased to $57.69.

Limitations on temporary total:
- Maximum weekly payment increased to $57.69.
- Minimum weekly payment increased to $15.

PROVINCE OF QUEBEC

Limitations on permanent total: Maximum weekly payment increased to $53.85.
Limitations on temporary total: Maximum weekly payment increased to $53.85.

WORKMEN'S COMPENSATION BENEFITS FOR PERMANENT AND TEMPORARY TOTAL DISABILITIES

Coastal and Great Lakes States—Dec. 31, 1954 (28 States)

CHART II–A

	Limitations on permanent total		Limitations on temporary total	
	Maximum weekly payment	Minimum weekly payment	Maximum weekly payment	Minimum weekly payment
1. Atlantic coastal States:				
Maine	$27.00	$15.00	$27.00	$15.00
New Hampshire	33.00	18.00	33.00	10.00
Massachusetts	30.00	18.00	30.00	18.00
Rhode Island	32.00	17.00	32.00	17.00
Connecticut	40.00	12.00	40.00	12.00
New York	36.00	15.00	36.00	12.00
New Jersey	30.00	10.00	30.00	10.00
Pennsylvania	32.50	22.50	32.50	22.50
Maryland	35.00	15.00	32.00	15.00
Delaware	30.00	15.00	30.00	15.00
Virginia	27.00	6.00	27.00	6.00
North Carolina	30.00	8.00	30.00	8.00
South Carolina	35.00	5.00	35.00	5.00
Georgia	24.00	7.00	24.00	7.00
Florida	35.00	8.00	35.00	8.00
Average	31.77	12.77	31.57	12.03
2. Gulf States:				
Alabama	23.00	5.00	23.00	5.00
Mississippi	25.00	10.00	25.00	10.00
Louisiana	30.00	3.00	30.00	3.00
Texas	25.00	9.00	25.00	9.00
Average	25.75	6.75	25.75	6.75
3. Pacific States:				
California	30.00	9.75	35.00	9.75
Oregon	51.92	18.46	45.00	20.77
Washington	46.15	23.07	42.69	23.07
Average	42.69	17.09	40.90	17.86
4. Great Lakes States:				
Minnesota	35.00	17.50	35.00	17.50
Wisconsin	42.00	14.00	42.00	8.75
Michigan	42.00	18.00	42.00	18.00
Illinois	29.00	14.25	29.00	14.25
Indiana	30.00	15.00	30.00	15.00
Ohio	32.20	10.00	32.20	10.00
Average	35.03	14.79	35.03	13.92
5. Coastal and Great Lakes average (28 States)	32.78	12.80	32.48	12.31
6. United States average (48 States)	33.41	12.93	34.96	13.02
7. Federal Longshoremen and Harbor Workers Act:				
Present	35.00	12.00	35.00	12.00
Proposed	50.00	20.00	50.00	20.00

Source: Analysis of Workmen's Compensation Laws, published by the Chamber of Commerce of the United States, Washington, D. C.

Mr. MARTINEZ. These records have been brought up through December of 1954 so they are really current. These statistics herein contained have been prepared by the United States Chamber of Commerce, and I think they are accurate.

Chart No. 1 gives you the comparable benefits in death, cases for the widows and children. We have on the chart I–A extracted from that chart the maximums and minimums that are prevailing today in the coastal and Great Lakes States.

As I said, they number 28. You will note at the bottom of the page of chart I–A that the maximum weekly benefits for a widow

only in the coastal and Great Lakes area are $27.42, and that the minimum weekly benefits are $12.16, and that the entire United States weekly benefits are $27.58, and the minimum is $12.29.

The present Federal Longshoremen's Act provides a maximum benefit of $52.50, or a little less than double the general average of these 28 States and the minimum is $18.

The present act proposes a maximum of $75 and a minimum of $30.

Senator DOUGLAS. May I discuss chart I–A for a moment. Chart I also seems to indicate that there is no limit on the maximum amount in the following States: Arizona, Nevada, New York, North Dakota, Oregon, Washington, West Virginia, Wisconsin, and in the Canadian Provinces. It indicates that the limits in Alaska for widow and children run to $15,000, and in Florida to $12,250, and New Mexico to $16,500, and Montana to $15,250, and Missouri is $12,000, and Michigan $14,400, and Wyoming $12,550.

Mr. MARTINEZ. Yes, sir; that is correct. But as I say, we are dealing with this situation.

The reason this is taken from these 28 coastal States is because these 28 States are the biggest employers of the longshore industry. We say that the averages, and we have taken general averages, and we could not work out averages on maximums because of the things you have just drawn to our attention, plus other factors that we do not think might be controlling there.

We do not think that they should be injected into this particular type of labor.

Our further belief is that in the past, the Longshoremen and Harbor Workers' Act as will be seen from comparing these figures, has traced pretty closely in some instances, and in other instances far more liberal than the general average, not only of these 28 States but of the United States as a whole. We think that that should be a controlling feature because, after all, you have the results of various legislatures who are giving as much consideration to the benefit of their citizens as the Government has, of course, a right to do.

Now, another reason why these should be followed and considered is because there should not be any great difference between the amount of benefits that a longshoreman should receive if he is injured aboard a ship than one injured ashore. The Longshoremen's Act merely confines the injuries to those occurring on the navigable waters, a longshoreman who is doing the same type of work but happens to be injured or killed on the dock, the State act would apply.

Senator DOUGLAS. Should the Federal Government go down to the level of the States or should the States come up to the level of the Federal Government?

Mr. MARTINEZ. My answer to that, if I may say, is this:

First, you must bear in mind that we have here, as I pointed out before, the well-considered opinions of these various legislatures. They certainly feel that they want to do right and justice by their citizens.

There should not be any difference or arbitrary view taken in the Federal act. As a matter of fact, as these figures show, and as the next chart will show, the Federal act in many respects has trailed along, and follows these averages right along to a great extent—being more liberal in the death cases now with no limit—but there is not much difference in the other provisions.

There is one other thing to bear in mind, as I pointed out in the earlier part of my statement, that compensation acts are not supposed to be a reimbursement of a complete loss of wages. It is supposed to be a reasonable amount awarded for specific injury.

Senator DOUGLAS. Under Secretary Larson argued yesterday, and I thought correctly, that compensation is intended to be just that. Compensation in part is for the loss of earnings caused by an industrial injury. I agree with him.

Mr. MARTINEZ. I do not believe that that is the philosophy behind the enactment of compensation acts.

Senator DOUGLAS. I think it is pretty clearly indicated by the fact that generally the scale of compensation is two-thirds of the earnings, subject of course to certain maximum limits. If it were not this, it would be a flat rate payment as Secretary Larson pointed out is the case in England. Instead of that, the benefits are graduated to the previous earnings or full-time earnings.

Mr. MARTINEZ. By that very token, sir what I meant was it was not to be a full payment.

Senator DOUGLAS. It is not full payment.

Mr. MARTINEZ. That is what I mean.

Senator DOUGLAS. It was intended to be a partial payment, and to bear a percentage relationship to the wage loss suffered.

Mr. MARTINEZ. I probably did not express myself clearly to the Senator. I meant that all of the acts have a percentage of the wage for determining the amount of the benefits.

Another point to be borne in mind, and I think it is highly important in arriving at what the benefit should be, is that benefits received under any of the compensation acts is not subject to any income tax of the Federal Government or State income tax in those States where the States have them.

Senator KENNEDY. Are not the State legislatures reluctant to increase compensations because they are concerned that they will drive shipping outside of their own harbors, and thus this has the same effect that unemployment compensation laws have had to favor those areas which have kept rates at the lowest level? Is not the Federal Government the only institution which is capable of setting an appropriately high minimum which will have to be met by everyone, as long as the States are struggling to retain and attract industry and are therefore concerned about keeping their benefits low.

Mr. MARTINEZ. I was going to touch later, sir, on the fact that I do believe that if affects the economy, that is, to have these benefits extremely high, because there is no question that the insurance coverages today for the same type of work on a ship are, I am told by one of the largest stevedor operators in the gulf, weighted 45 percent because of the more liberal benefits of the Federal act over the same coverage under the State act in the event it happened ashore.

I am further advised that on the proposed increases here there will be a very considerable increase over and above that load as of today. That was one of the other points on the effect on the economy.

I may also say while I am on that point that it is our concerted opinion that the increase or exorbitant increase of these benefits, the percentages of which I haven't all worked out, but they go considerably over what are in existence today. In fact, the United States merchant marine will be affected in that the ship repairers are great

employers of repair labor in their shipyards and drydocks. We all know that United States-flag vessels are required to have all of their repairs made in the United States except for those emergency repairs that might be required in a foreign port resulting from stranding or collision, and necessary to bring it back home for the full repair or be subject to a 50 percent duty on any repairs elsewhere.

By the same token, the foreign-flag vessels do not put in to our shipyards to have repairs done except in emergency because of the fact that they can have them done at home so much cheaper.

Now, if we return to chart II–A, which gives the comparative average benefits of the 28 coastal and Great Lakes States, with the United States coverage at large, and the Federal act and proposed Federal act, we find that for permanent total disability the coastal and Great Lakes averages are $32.78, and the minimum is $12.80. For temporary the maximum is $32.48 and the minimum is $12.31. For the United States as a whole, it is $33.41, and the minimum is $12.93, and the temporary total disability is $34.96, and $13.03 for the minimum.

Now, if you look at those figures, you can see how close they are to the present Federal provisions in the Longshoremen's Act, where the maximum is $35 a week and the minimum $12 a week.

So you can see the exorbitant and large change that is attempted in that way. That is attempted by the proposed act.

In respect to the change in the waiting periods, as has just recently been mentioned by the speaker ahead of me, I think it takes away the inducement of employees to return to work. There should be a waiting period longer, no less than the 7 days now provided, and I think the other provision creates better justice between the parties.

The elimination of the limits of the $10,000 and $11,000 which is proposed from section 14 (m) will also tend to increase malingering and may induce injuries.

Senator DOUGLAS. Do you think people get killed in order that their wives and children may draw benefits, do you think they do that?

Mr. MARTINEZ. I was only speaking of the partial and permanent total disabilities.

Senator DOUGLAS. You are speaking of death?

Mr. MARTINEZ. Well, no, I think that the death benefits of $52.50, when you take into consideration that there is no limit to what the benefits will be, where the dependencies exist, gives a very fair and adequate award when you consider what the employer has given up.

Senator DOUGLAS. Your objection is to taking off the upper limit on permanent total or permanent partial?

Mr. MARTINEZ. That is what I am talking about. So far we think that the present limit in the death benefits gives adequate protection. If you eliminate all of the limits or put it too high, there is nothing left. The act is supposed to be an equitable act worked out for the benefit and protection of both parties, to help, at the price of industry, the injured man and his family. The big surrender of the defenses for defeating claims has been on the part of the employer. He has no defense unless the man wantonly puts his head in there to get it cut off, or something of that sort. Negligence is out, and negligence of the fellow servant is out and assumption of risk is out, and the man, if he is injured in the course of his employment, is entitled to his benefits.

Senator DOUGLAS. That is the theory of workmen's compensation.

Mr. MARTINEZ. That is correct. But what I am saying is that it is something that has to be a give and take proposition between the employer and the employee. It is a result of the surrender by the employer of the defenses he has, and the man gets immediate treatment and he gets immediate payments, and in many cases as a matter of law he would not be entitled to anything at all.

Senator DOUGLAS. In return he gives up the opportunity of getting a big judgment against the steamship companies and the stevedore companies.

Mr. MARTINEZ. That is correct.

Senator DOUGLAS. And juries have no more fondness for steamship companies than they have for railroads.

Mr. MARTINEZ. Frankly, on the juries of today I would rather not go into that phase of it. If I may be permitted, I would like to let that out for the time being.

Senator DOUGLAS. I would like to put into the record the comment by Under Secretary Larson yesterday, which I thought was very good, in which he said:

> The right of workmen to be paid workmen's compensation is not something that has been granted to them by some benevolent government out of the goodness of its heart as a matter of grace. It is something which they obtained 40 or more years ago throughout the country for the most part by giving up their centuries-old common-law right to bring damage suits for personal injuries against their employers.

It is not often that I endorse statements by representatives of the Eisenhower administration, but in this particular case I think this was a very wise comment.

Mr. MARTINEZ. Senator, I don't think it is a one-way street. I think as a matter of fact just to sidestep for a moment on that, there has been a movement off and on, many times, to bring other people into the compensation statute and give them compensation benefits.

Senator DOUGLAS. You mean the seamen?

Mr. MARTINEZ. Yes.

Senator DOUGLAS. They still cherish this right of getting big judgments from juries, and the same thing is true of the operating crews on the railroads.

Mr. MARTINEZ. That may be so.

Senator DOUGLAS. I think perhaps the longshoremen may have given up something in giving up their common-law rights.

Mr. MARTINEZ. On the general average, I don't know. Being fairly familiar with the operations that go on, there would be certain incidents where they would be benefited, but at least from the area which I speak of, where great safety precautions have been put in, and the old way of handling matters has been changed, the employer would have a pretty good defense in a great portion of those cases if it went back to the old way of doing it. I think the compensation statute is the best thing for the industry and I think it has been, and it is working.

Senator DOUGLAS. I am glad that you are not going to refight the battle of employers' liability versus workmen's compensation.

Mr. MARTINEZ. That is far from my mind.

As I say, I think the taking off of those limits, and the delaying of the waiting periods is gross injustice to the employer. We feel that

they need the waiting period now provided for, for minor injuries, and most of them are minor injuries, and also the taking of those limits off the permanent total and temporary total disability all tends to take away the incentive of the man to go to work.

I think that that is the reason why people put it in, and that is the spirit which should be maintained. I have given about all I have at the moment. I hope I will be able in memorandum to prepare it.

Senator DOUGLAS. Any memorandum you submit within 10 days will be incorporated in the record.

(See telegram, p. 60)

Mr. MARTINEZ. It has been a pleasure, and on behalf of the people I represent and myself, I want to thank the committee for allowing us this privilege to appear before you.

Senator DOUGLAS. That is your right and it is our pleasure.

Mr. MARTINEZ. Thank you.

Senator DOUGLAS. The next witness is Mr. Schmuck. I understand he is now in the room and available to testify when called.

STATEMENT OF EDWARD SCHMUCK, CHAIRMAN, INSURANCE COMMITTEE, WASHINGTON BOARD OF TRADE

Mr. SCHMUCK. May I offer my apology for not being here on first call. I had understood that the call would be at 10:30.

Mr. Chairman, we recognize that the interests of employees and employers of the District of Columbia is of necessity a minor and corollary consideration in connection with the Longshoremen's and Harbor Workers' Compensation Act, since it reflects principally the interests of employees and employers in the seaports and other maritime activities throughout the United States.

For that reason we have prepared a bill, H. R. 3015, to establish for the District of Columbia and within the framework of the organic laws constituting the District of Columbia Code a D. C. Workmen's Compensation Act. We are understandably hopeful that the Congress will, in the reasonably near future, take favorable action on that proposal; and while it is not a matter before this committee, we earnestly seek your support for it.

We oppose the principal features in the bill under consideration which would increase maximum benefits to $50 a week, minimum benefits to $20 a week, and shorten the waiting period necessary for payment of the first week's benefits because we believe that it would place the employers of the District of Columbia at a competitive disadvantage.

There is certainly no area more highly competitive with adjacent jurisdictions than is the District today. There are now more residents in nearby Maryland and Virginia than in the 69-plus square miles of the District of Columbia and future growth in greater Washington will undoubtedly be predominantly in Maryland and Virginia. Business expansion and increased employment will no doubt follow the same pattern. In our judgment the adoption of these benefits which have been estimated to increase premium costs approximately 40 percent would be the further development of conditions which would unnecessarily encourage employment which would otherwise remain in the District to be removed from its jurisdiction.

The members of the committee undoubtedly know that the District of Columbia is suffering already from a movement of business and higher income population to points outside its boundaries. A continuation of an acceleration of that movement has serious implications to the economic and fiscal health of the District of Columbia. This in turn will inevitably pose serious problems for the Congress to deal with.

For these reasons we request the committee to take no action on these bills at this time; or as an alternative, if it is concluded that the benefits should be liberalized for the longshoremen and harborworkers; then we request the committee to exclude employment in the District of Columbia from the new provisions of the law.

Senator DOUGLAS. Mr. Schmuck, what are the present premium costs in the District in relation to payroll?

Mr. SCHMUCK. I am sorry, sir, I cannot answer that, but I will be glad to get it for the record.

Senator DOUGLAS. Is it not probable that the premium cost of the percentage of payroll are in whole relatively low in the District because you have very little manufacturing, and such manufacturing as you have is in the light industries rather than in the heavy industries, and the mercantile trades and soft goods have a much lower rate and therefore lower benefit costs.

Isn't it probable that the average percentage rate for compensation insurance is relatively slight?

Mr. SCHMUCK. I think there is one factor, Senator, that works the other way in the District of Columbia experience rating. That is, that a large percentage of our working population here is engaged in construction and allied activities, and of course there you have a high factor working against the other factors. But I will be glad to try to get that information, sir, and put it in the record.

Senator DOUGLAS. Thank you very much.

(The letter and table referred to follows:)

WASHINGTON BOARD OF TRADE,
Washington, D. C., June 30, 1955.

Hon. PAUL H. DOUGLAS,
Chairman, Labor Subcommittee, Committee on Labor and Welfare,
United States Senate, Washington, D. C.

DEAR SENATOR DOUGLAS: The attached chart is submitted in response to your inquiry during my appearance before your committee as a representative of the Washington Board of Trade in connection with proposed amendments to the Longshoremen's and Harbor Workers' Compensation Act.

We selected at random 12 classifications of employment ranging from clerical to heavy construction. The attached chart shows the variances in the premium among the District of Columbia, Maryland, and Virginia. In some respects, we have been informed, the comparisons are not precise because the rates for the District of Columbia, despite the higher benefits that are provided, reflect the fact that all of our employment is concentrated in an urban area in which employment and conditions of employment are quite thoroughly controlled, both by employers and by the District of Columbia government.

We have added to the chart a statement of comparative primary benefit factors of the laws of the District of Columbia, Maryland, and Virginia which sets out the many respects in which the workmen's compensation benefits of the District of Columbia exceed to a considerable extent those of the adjacent States of Maryland and, particularly, Virginia. It is these factors, reflected in the final analysis in the cost of workmen's compensation insurance to employers, which primarily affect the competitive situation of District of Columbia employers and are a

part of the reasons underlying the very undesirable exodus of some businesses from the District to adjacent areas.

If there is any further information that we can furnish, please call upon us.

Respectfully yours,

EDWARD J. SCHMUCK,
Chairman, Insurance Committee.

LIST OF OCCUPATIONS

1. Department stores—Retail
2. Clothing—Wearing apparel, dry goods, retail
3. Clothing—Wearing apparel, dry goods, wholesale
4. Drug stores
5. Concrete construction—Bridges, culverts
6. Concrete construction—Not otherwise classified
7. Concrete work
8. Carpentry—Private residences
9. Iron or steel works
10. Truckmen—Not otherwise classified
11. Clerical
12. Laundries—Not otherwise classified

COMPARISON OF WORKMEN'S COMPENSATION INSURANCE RATES FOR A REPRESENTATIVE GROUP OF OCCUPATIONS

Rates per $100 of payroll

	District of Columbia	Maryland	Virginia		District of Columbia	Maryland	Virginia
1	$0.39	$0.54	$0.37	7	$3.30	$1.81	$0.83
2	.41	.38	.20	8	2.12	2.07	1.30
3	.40	.45	.30	9	3.18	3.83	1.93
4	.66	.78	.49	10	2.97	2.31	1.33
5	7.45	5.03	2.04	11	.10	.10	.06
6	3.80	3.03	1.95	12	.73	1.15	.55

Essential benefit features of the laws of the District of Columbia, Maryland, and Virginia

	Fatal injuries				Permanent and temporary total disability			
					Limitations on permanent total			
(a) State	(b) Maximum period	(c) Maximum per week	(d) Maximum amounts	(e) Maximum percent of wages	Maximum percent of wages	Maximum weekly payment	Time limit	Amount limit
District of Columbia	Not specified	$35	No limit	66⅔	66⅔	$35	Life	
Maryland	500 weeks	$25	$10,000	66⅔	66⅔	$35	do	$15,000.
Virginia	300 weeks	$27	$8,100	60	60	$27	500 weeks	$10,800.

	Permanent and temporary total disability				Maximum amounts for scheduled injuries				
	Limitations on temporary total								
State	Maximum percent of wages	Maximum weekly payment	Time limit	Amount limit	Arm at shoulder	Hand	Leg at hip	Foot	1 eye
District of Columbia	66⅔	$35	Disability	$11,000	$9,800	$7,420	$8,680	$6,055	$4,900.
Maryland	66⅔	$35	312 weeks	$5,000	$5,300	$4,150	$5,300	$3,750	$4,000.
Virginia	60	$27	500 weeks	$10,800	$5,400	$4,050	$4,725	$3,375	$2,750.

Senator DOUGLAS. The next witness is Dr. Ralph S. Dewey, the Pacific-American Steamship Association. Is Dr. Dewey here? We extended an invitation to the Pacific-American Steamship Association representing the Pacific coast shippers.

If Dr. Dewey is not here, is Mr. Jeff Kibre of the International Longshoremen's and Warehousemen's Union here?

STATEMENTS OF JEFF KIBRE, WASHINGTON REPRESENTATIVE OF THE INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION; FRANK M. ANDREWS, EXECUTIVE BOARD MEMBER; AND JULIUS STERN, WELFARE DIRECTOR, SAN FRANCISCO, CALIF.

Mr. KIBRE. I have with me two members of the union from the West Coast, who have had a great deal of experience with the operation of this law, and I am going to confine my time to an absolute minimum so that they may bring to the committee some of the actual facts of life.

Senator DOUGLAS. Will you be seated.

Mr. KIBRE. This is Mr. Julius Stern and this is Mr. Frank Andrews.

Senator DOUGLAS. Before you begin to testify, I would like to make this statement.

It is well known that I—and my colleagues—completely disagree with the political views of some of your union's most prominent and powerful leaders. To the extent that the union has supported these views, I completely disagree with it.

But this is neither the occasion nor the forum to put those political views on trial or to label them, with or without a hearing.

In the work assigned to it by the Senate to study this legislation affecting longshoremen, it is the right and the duty of the Labor Committee to learn all that it can about the possible impact of these bills upon the workers and companies most directly involved.

There are scores of such companies and thousands of longshore and harbor workers involved. I might add that the loyalty of these dockside workers under the statutory requirements of the Magnuson Waterfront Security Act of 1950 has been cleared by Government agencies. We need to know and cannot ignore the effect of these legislative proposals on these persons and interests if we are to advise the senate about them.

With this object in view, we shall give fair consideration to the evidence on this subject which you have put before us.

Mr. KIBRE. We appreciate that, and we are concerned here only with the amendments of the Longshoremen and Harbor Workers' Act.

Senator DOUGLAS. Will you proceed.

Mr. KIBRE. I have a prepared statement and, knowing the time element is short, I just want to draw attention to a few of the highlights.

Senator DOUGLAS. You will file the statement for the record and then summarize it?

Mr. KIBRE. Yes, and I will ask the full statement be in the record.

Senator DOUGLAS. Yes.

(Statement submitted by Mr. Kibre follows:)

STATEMENT ON AMENDMENTS TO LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT BY JEFF KIBRE, WASHINGTON REPRESENTATIVE INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, WASHINGTON, D. C.

INTRODUCTION

The International Longshoremen's and Warehousemen's Union welcomes this opportunity to testify in support of legislation to increase the benefit features of the Longshoremen's and Harbor Workers' Compensation Act.

As the representative of over 16,000 longshoremen and related crafts employed on the west coast, in Alaska and Hawaii, we have long sought to keep this act in harmony with changing conditions. Our approach was well summarized before a Senate subcommittee in 1948 by William McCauley, Director, Bureau of Employees' Compensation, when he said:

"* * * workmen's compensation legislation, to properly serve the purpose for which it is intended, should be reviewed from time to time in the light of changes in the level of wages and earnings. Compensation for disability is intended to replace the wage lost by the injured worker while incapacitated for work due to his occupational injury. The rate of compensation should have a realistic relationship to the average wage received by the injured person." [1]

Improvements in the benefit features of the act are long overdue. When the act was first passed in 1927 it provided the average disabled longshoreman with benefits equal to two-thirds of his weekly earnings. Today, under the act, the average longshoreman can only obtain little more than one-third of his weekly wages.

With the exception of a moderate revision of benefits in 1948 and technical amendments in preceding years, the act remains as written in 1927. This not only accounts for the failure of the act to carry out its original intent; it also points up the need for action by this Congress.

There are four bills which propose to revise the benefit structure. These are S. 594 (Senator Morse and 15 cosponsors), S. 1307 (Senator Smith and cosponsors), S. 1646 (Senator Magnuson), and S. 2280 (Senators Magnuson, Morse, and cosponsors). S. 2280 was introduced June 21, and is identical to S. 1646 with the exception that the former contains a section providing that the amendments are effective upon enactment of the bill. Another bill, S. 1308 (Senator Smith and cosponsors), proposes changes in the special fund provided under the act.

The first four bills increase the maximum weekly benefit from $35 to $50. These bills also propose an increase in the minimum benefit for total disability and a shortening of the waiting period with respect to eligibility for benefits. Three of the bills (S. 1307, S. 1646, S. 2280) propose that death benefits be correlated with the new weekly benefits. In addition to these changes, S. 1646 and S. 2280, propose to revise the schedule of indemnities and to repeal the limitations on aggregate compensation payable under the Act.

In the opinion of the ILWU these bills do not cover all aspects of the act which are in need of revision. But we agree that they meet the most pressing hardships.

Because S. 2280 is the most comprehensive bill before the committee, our union has singled it out for endoresment. We, therefore, direct our discussion primarily to this measure. We are also proposing that the maximum benefit contained in S. 2280 be increased from $50 to $60.

In discussing the bills I shall deal first with the question of weekly benefits, then with the waiting period, scheduled indemnities, death benefits, and the maximum limitation on compensation.

WEEKLY MAXIMUM AND MINIMUM BENEFITS

In reading the Longshoremen's and Harbor Workers' Compensation Act, we see repeatedly stated the principle that benefits should be equal to 66⅔ percent of wages. Note for example, sections 8 and 9. At the same time, however, we find that section 6 (b) completely nullifies this principle. Section 6 (b) provides that weekly benefits shall not exceed $35 and that compensation for total disability shall not be less than $12 per week. There is also a proviso that if average weekly wages are less than $12 per week, compensation for total disability shall equal the average wage. Section 6 (b) effectively controls the rate of benefits and renders meaningless the proposition that benefits should be equivalent to 66⅔ percent of average wages.

[1] Hearing before a subcommittee of the Senate Committee on Labor and Public Welfare, 80th Cong., 2d sess., April 13, 1948.

S. 2280, along with the other bills, proposes to increase the maximum weekly benefit from $35 to $50. This bill (along with S. 1646 and S. 594) also proposes a minimum of $20, while S. 1307 urges a minimum of $15.

In our judgment the proposed $50 maximum is a big step forward but it does not go quite far enough. We say the maximum weekly benefit should be at least $60. Our position is based on applying the original intent of the act to current wage levels, along with the reaffirmation by Congress of the 66⅔ percent principle embodied in the 1949 amendments to the Federal Employees' Compensation Act.

In the original act as passed in 1927, a ceiling on weekly benefits was set at $25. An examination of the hearing records shows that this ceiling was set on the basis that the average longshoreman would be eligible for benefits equal to 66⅔ percent of his wages. This meant that the repeated use of this percentage figure in the act had meaning with reference to the benefit structure.

Data available in 1927 before the House and Senate Labor Committees, showed that most longshoremen were earning much less on the average than $37.50 a week—the figure used to establish the $25 ceiling. For example, in hearings before the House Committee on Education and Labor it was pointed out that only 9 percent of the men employed in the Port of Seattle, one of the few areas which enjoyed regularity of employment, would be entitled to the $25 maximum.[2]

Subsequently, in 1931, data released by the Bureau of Labor Statistics showed that longshore earnings averaged little more than $30 weekly and pointed out that employers and the union in New York had agreed on a figure for average weekly earnings of $30 as a basis for computing accident compensation under the law.[3]

In 1948, after a long period of rising wage levels, the maximum weekly benefit was increased to $35. Both the House and Senate reports on the 1948 amendments made it clear that the increased weekly benefit did not measure up to prevailing wage levels. Liberalization of other features, notably the schedule of indemnities, was proposed in order to bring "the act into relative harmony with current economic facts."[4] However, the liberalized indemnity schedule was dropped before the amendments obtained final approval. In effect, the 1948 amendments represented a downpayment in bringing the act up to date with that period.

Since 1948 longshore wage rates have continued to rise steadily. Hourly rates now have reached a level approximately three times the average 75 cents an hour paid in 1927—when the original ceiling of $25 was placed on weekly benefits.

Complete data on prevailing average earnings in the longshore industry are admittedly not available. However, satisfactory figures are available regarding current and recent earnings on the Pacific Coast. They are maintained by the Pacific Maritime Association and published monthly in the PMA Research Bulletin. There is attached hereto, as exhibit I, a table showing average weekly hours and earnings for all Pacific coast ports for the years 1953 and 1954, and for the first 4 months of 1955.

Because of hiring hall procedures, requiring equal division of work opportunity, the earning averages are truly indicative of what the typical longshoreman makes. It should be noted, however, that these figures include the earnings of casuals, who work intermittently during periods of peak operations. The figures are computed by dividing aggregate payrolls by the number of men working. The statistical consequence is that the figures understate the average earnings of registered longshoremen. The amount of understatement is unknown though probably small.

Exhibit I shows that weekly earnings averaged $97.86 in 1953, $94.21 in 1954, and $99.73 for the first 4 months of 1955. With allowance for the understatement referred to above, it is quite appropriate to say that weekly earnings on the Pacific coast are averaging about $100.

Examination of available data for the East coast points to an estimated average weekly earning of approximately $92. When this is combined with the West coast, the average weekly earning for these two basic areas is probably in the neighborhood of $95. It is unlikely that the inclusion of other ports such as those in the gulf, would pull this average below $90.

It follows from these figures that the maximum weekly benefit rate under the Longshoremen's and Harbor Workers' Compensation Act should be at least $60—two-thirds of $90. Setting the maximum benefit at anything less than $60 will mean that the original standards are not restored. In fact, a $60 maximum represents only a moderate application of the 66⅔ percent principle.

[2] Testimony of John Ambler of the Seattle Waterfront Employers' Association, before House Committee on Education and Labor, on S. 3170, 69th Cong., 2d sess.

[3] BLS Handbook of Labor Statistics, 1931 Edition, Bulletin 541, September 1931, p. 784.

[4] Senate Report 1315, 80th Cong., 2d sess., p. 3. House Report 2095, 80th Cong., 2d sess., pp. 98-99.

A more liberal application of this same principle was approved by Congress in 1949 when far-reaching changes were made in the Federal Employees' Compensation Act. For example, the ceiling on maximum monthly benefits was increased from $116.66 to $525. It should be understood that the $525 monthly maximum makes it possible for all employees earning up to $787.50 monthly to receive benefits equivalent to two-thirds of their wages. This means that the overwhelming majority of Government employees are covered by the 66⅔ percent principle.

The basic policies behind the 1949 amendments to the Federal Employees' Compensation Act are clearly stated in the report of the House Committee on Education and Labor. In introducing this legislation the House report said: "Any flat monthly maximum, the effect of which inevitably in some cases prevents the employee from receiving a fair proportion of his wage loss in total and partial disability cases, is, by its very nature, unrealistic and inequitable." [5]

This policy was reiterated in the report of the Senate Committee on Labor and Public Welfare, offered by Senator Douglas. This report said: "So far as economically reasonable, it (the proposed bill) accepts the principle that compensation should be a consistently fair proportion of the economic loss.[6]

It is submitted that what Congress provided for Federal employees in 1949, should now be applied to the Longshoremen's and Harbor Workers' Compensation Act. Actually the proposed ceiling of $60 does not go as far as the maximum in the Federal Employees' Compensation Act. In practice it will mean that only those longshoremen with earnings less than the average, namely, $90 a week, will be entitled to 66⅔ percent of their wages. Thousands of workers earning above this figure will still suffer discrimination. Those earning below the average will simply get in benefits, two-thirds of their average wage.

With respect to the minimum benefit of $12 for total disability, as presently set forth in section 6 (b), it will be noted that S. 2280 proposes an increase to $20. S. 1307 would only increase the minimum to $15. It is urged that conditions more than justify the $20 figure.

The minimum benefit is designed primarily to provide protection for casual workers. It will apply only when weekly earnings are less than $30. If weekly earnings are less than $20, workers will only be entitled to their actual average earnings in the event of total disability.

WAITING PERIOD AND RETROACTIVE BENEFITS

Section 6 (a) of the act provides for a waiting period of 7 days before disabled workers are eligible for benefits. It also provides that in case the injury results in disability of more than 49 days, the compensation shall be retroactive to the date of disability.

S. 2280, along with S. 594 and S. 1646, proposes that the waiting period shall be reduced to 3 days and that benefits shall be retroactive to the date of injury if the disability exceeds 14 days. S. 1307 proposes a waiting period of 7 days and a period of 28 days before benefits are retroactive. It is urged that the proposal in S. 2280 is in line with general compensation practices and worthy of approval.

For many years there has been a growing trend in favor of reducing the waiting period or eliminating it entirely. As shown in the table which is attached as exhibit II, 1 west coast State, Oregon, has no waiting period; 8 States and Alaska have a waiting period of 3 days; Florida and Puerto Rico have 4 days; 4 States and Hawaii have 5 days; Illinois has 6. Altogether, 15 States and all 3 territories have shorter waiting periods than that now provided in the act.

The Federal Employees' Compensation Act has a 3-day waiting period. When this act was amended in 1949 an unsuccessful attempt was made to eliminate the waiting period entirely.

In Canada, every Province has a waiting period shorter than in our Longshoremen's and Harbor Workers' Compensation Act.

With regard to retroactive compensation for the waiting period, the Longshoremen's act is relatively even more backward, as shown in the table attached as exhibit III. Of States having this type of provision, only California and the District of Columbia have the 7-week provision—all other States have shorter periods.

Eleven States and Puerto Rico pay compensation for the waiting period after 2 weeks or less. Four States, Hawaii and the Federal Employees' Compensation Act, pay after 3 weeks.

In Canada, every Province has a more liberal provision than the Longshoremen's and Harbor Workers' Compensation Act.

---

[5] House Report 729, 81st Cong., 1st sess., p. 9.
[6] Senate Report 836, 81st Cong., 1st sess., p. 19.

As long ago as 1948, the Committee on Workmen's Compensation of the National Conference on Labor Legislation—15th conference—a conference sponsored by the United States Department of Labor and attended by State labor department personnel from all over the country—recommended that the waiting period be compensated for after 14 days.

SCHEDULED INDEMNITIES

Subparagraphs 1 through 12 of section 8 (c) of the act provide a specified number of weeks of compensation when there is permanent partial disability consisting of a total or partial loss, or loss of use of, certain members of the body such as arms, legs, hands, feet, etc. The compensation provided in each category is considered as an indemnity. There has been no change in this schedule, other than a technical amendment in 1934, since the act was written. The only liberalization came in 1948 when the dollar value of weekly benefits was increased.

Section 2, of S. 2280, proposes to increase the number of weeks of compensation in each subdivision of this schedule by approximately an aggregate of some 12 percent. This proposed schedule is identical to the indemnity benefits now contained in the Federal Employees' Compensation Act. Moreover, this schedule was approved by both the Senate and House during consideration amendments to the longshoremen's act in 1948. As a result of faulty language the new schedule was dropped in conference.

More liberal payments for specific injuries are particularly justified for longshoremen. Present provisions granting 280 weeks' compensation for loss of an arm, or 248 weeks' compensation for loss of a leg, are not only inadequate for any worker but even more so for longshoremen. Longshoremen use their arms and legs in heavy manual labor and in the event they suffer loss of these members, they can no longer be longshoremen. The loss of an arm or leg, which would not totally handicap another worker in his regular occupation, places a longshoreman in the position of seeking other employment.

Liberalization of the indemnity schedule would bring the present act more in line with modern concepts of workmen's compensation. On this subject the Secretary of Labor recently pointed out:

"We should attempt not only to compensate the injured worker, but to restore him to his former producing capacity. We no longer think of workmen's compensation as a private contest between employer and employee but as a type of income insurance. No longer do we think of workmen's compensation as a cash payoff but instead as a means of restoring not only the worker's wages but the worker himself." [7]

COMPUTATION OF DEATH BENEFITS

The basis for computing death benefits under the present act is set forth in section 9 (e). This section provides that in computing death benefits the average weekly wages of the deceased shall be considered to have been not more than $52.50 nor less than $18. It also contains a proviso that total weekly compensation shall not exceed the weekly wages of the deceased. It will be noted that the maximum and minimum figures used in this section represent presumed wage levels arrived at on the basis of the maximum and minimum weekly benefits set forth in section 6 (b). (For example, $35 is two-thirds of $52.50.)

Section 3 of S. 2280 and section 2 of S. 1307 propose to correlate section 9 (e) of the act with the proposed new maximum and minimum weekly benefits. Under S. 2280 death benefits would be computed on the basis that the wages of the deceased shall be considered to have been not more than $75 nor less than $30. Because S. 1307 calls for a minimum weekly benefit of $15, it proposes that the presumed wage level shall not be less than $22.50. Both bills retain the proviso that total weekly compensation shall not exceed the weekly wages of the deceased.

Since the ILWU urges a maximum weekly benefit of $60, we propose that section 9 (e) shall be revised to provide presumed wage levels of $90 and $30.

[7] Annual report of the Secretary of Labor for 1954, p. 17.

MAXIMUM LIMITATION ON CERTAIN BENEFITS

Section 14 (m) of the act provides limitations upon total compensation payable for certain classes of disabilities. There is no limit on cases of permanent total disability or death.

Section 4 of S. 2280 proposes to repeal the limits now provided uuder section 14 (m). This proposal has substantial merit and we strongly urge its approval.

It will be noted that under section 14 (m) there is a limit of $11,000 for compensation payable for cases of temporary total disability arising under section 8 (b), and for all classes of disabilities arising under section 8 (c), excepting subdivision 21. It will also be noted that most of these categories have built-in limitations. For example, the subdivisions under section 8 (c) set forth a specified number of weeks of compensation for loss of a member of the body or impairment of any function of the body. The only open-end provision here is the period of temporary total disability. Obviously, patients are under medical care during this period and, therefore, have little opportunity to prolong, unduly, the healing period. It will also be noted that subdivision 21 of section 8 (c), which is under a limitation of $10,000, provides for supervision of the affected person by the Deputy Commissioner of the Bureau of Employees' Compensation. These built-in limitations should provide ample safeguards against abuses. On the other hand, the flat dollar limitations can only result in arbitrary ceilings upon compensation.

In recent years there has been a growing trend against arbitrary limitation. Many States have eliminated such provisions. The Federal Employees' Compensation Act has never contained a limitation upon total compensation and this law has stood the test of time for many hundreds of thousands of Government employees.

It must also be pointed out that an increase in the maximum weekly benefit, along with an increase in the schedule of indemnities, will be sharply limited unless section 14 (m) is repealed or revised substantially. An example will establish this beyond question. Let us take the case of a worker suffering loss of an arm. Under the proposed new schedule of indemnities this worker would be entitled to 312 weeks' compensation at the prescribed weekly benefit, plus additional compensation for the healing period. If the maximum weekly benefit is $50, the worker would be entitled to 312 weeks' compensation at $50 a week, or a total of $15,600. In addition he would be entitled to an appropriate number of weeks of compensation at $50 weekly for the healing period. In other words, unless the limit of section 14 (m) is at least $18,000, an increase in the maximum weekly benefit and the schedule of indemnities, would be of no benefit.

It is urged that the most equitable basis for operation of the act will be achieved if section 14 (m) is repealed outright.

EXHIBIT I

Average weekly hours and earnings—shoreside, all ports of Pacific coast

	1955		1954		1953	
	Hours	Earnings	Hours	Earnings	Hours	Earnings
January	33.9	$98.38	31.1	$89.68	33.3	$92.81
February	34.5	102.66	32.9	96.01	32.3	91.00
March	33.2	98.50	33.4	96.32	36.1	100.83
April	33.8	99.40	33.1	95.41	35.4	99.35
May			34.6	101.01	36.0	101.01
June			34.0	98.56	35.4	100.94
July			32.6	93.72	36.6	106.28
August			32.6	94.13	35.0	100.29
September			32.2	92.99	34.4	98.98
October			33.6	97.27	34.3	98.42
November			30.6	88.36	32.8	94.79
December			30.9	87.10	31.2	89.62
Average	33.8	99.73	32.6	94.21	34.4	97.86

Source: Pacific Maritime Association Research Bulletin.

EXHIBIT II

Jurisdictions having waiting periods shorter than the Longshoremen's and Harbor Workers' Compensation Act

Jurisdiction:	Waiting period (Number of days)
Oregon	0
U. S. Federal Employees	3
Alaska	3
Delaware	[1] 3
Maryland	3
Missouri	3
Rhode Island	[2] 3
Utah	3
Washington	3
Wisconsin	3
Wyoming	[3] 3
Florida	4
Puerto Rico	[3] 4
Hawaii	[2] 5
Mississippi	5
Nevada	5
North Dakota	5
Oklahoma	5
Illinois	[3] 6
Canada: Alberta, Saskatchewan	1
British Columbia	3
Manitoba	3
Newfoundland	4
New Brunswick	4
Prince Edward Island	4
Nova Scotia	5
Ontario	5

[1] None if hospitalized.
[2] Total disability only.
[3] Temporary disability only.

Sources: For United States—BLS, State Workmen's Compensation Laws, September 1954; for Canada—Department of Labour of Canada, Workmen's Compensation in Canada; a Comparison of Provincial Laws, December 1954.

LIBERALIZATION OF SPECIAL FUND

Under section 44 of the act, a special fund is established and is made available for certain types of benefits. This fund is derived from compensation payable for death when it is determined that no person is entitled under the act to receive such compensation. The fund also is made the custodian of all amounts collected as fines and penalties under the provisions of the act. This fund is administered by the Secretary of Labor.

S. 1308 proposes to liberalize the purposes for which this fund may be spent. We support this measure and urge its approval.

CONCLUSION

In urging favorable action on the far-reaching 1949 amendments to the Federal Employees' Compensation Act, the House Committee on Education and Labor had this to say:

"Under prevailing economic conditions the workmen's compensation benefits at present are at such low levels as to cause this necessary act to lose its effectiveness. It is no dispute that great hardships are being imposed upon disabled Federal employees or their dependent families and that many of them are left with the only alternative of relying upon charity or the help of their friends to afford them the barest kind of existence. The Government * * * should restore to [its] employees that measure of security which is necessary to maintain them during disablement, and their dependent families after death due to employment injuries." [8]

We say that this statement applies with equal force in 1955 to operation of the Longshoremen's and Harbor Workers' Compensation Act. We feel it is the obligation of this committee to approve benefit standards which will restore the effectiveness of the act, and place it, alongside the Federal Employees' Compensation Act, in a position of leadership in the field of compensation legislation. We urge this committee to report favorably S. 2280, along with the improvements in the dollar maximum and in the computation of death benefits as urged by the ILWU.

[8] House Report 729, 81st Cong., 1st sess., p. 3.

EXHIBIT III

Jurisdictions having provisions superior to Longshoremen's and Harbor Workers' Compensation Act relative to duration of compensable injury before compensation is retroactive to date of disability

Jurisdiction:	*Compensation retroactive after—*
Nevada	5 days.
North Dakota	Do.
Delaware	7 days.
New Hampshire	Do.
Massachusetts	8 days.
Wyoming	Do.
Wisconsin	10 days.
Arizona	2 weeks.
Connecticut	Do.
Rhode Island	Do.
Puerto Rico	Do.
Mississippi	Do.
Hawaii	3 weeks
Kentucky	Do.
Minnesota	Do.
Montana	Do.
West Virginia	Do.
United States Employees' Compensation Act.	Do.
Arkansas	4 weeks.
Misouri	Do.
Illinois	Do.
Idaho	Do.
Indiana	Do.

Jurisdiction—Continued	*Compensation retroactive after—*
Maine	4 weeks.
Michigan	Do.
New Jersey	Do.
New Mexico	Do.
North Carolina	Do.
South Carolina	Do.
Tennessee	Do.
Texas	Do.
Vermont	Do.
New York	5 weeks.
Ohio	Do.[1]
Colorado	6 weeks.
Louisiana	Do.
Nebraska	Do.
South Dakota	Do.
Virginia	Do.
Canada; Alberta and Saskatchewan.	(2)
Newfoundland, New Brunswick, and Prince Edward Island.	4 days.
Nova Scotia and Ontario.	5 days.
British Columbia	6 days.
Manitoba	7 days.

[1] Permanent disability only.
[2] No provision because waiting period only 1 day.

Source: For United States: BLS State Workmen's Compensation Laws, September 1954.
For Canada: Department of Labour of Canada, Workmen's Compensation in Canada; a Comparison of of Provincial Laws, December 1954.

Mr. KIBRE. We have endorsed the consolidated bill which was introduced on Tuesday by Senators Magnuson and Morse. We feel that bill comes closest to meeting the requirements of the situation with respect to bringing the compensation standards of the longshoremen and harbor workers act up to date.

We take one exception, however, and that is with respect to the maximum. We feel that the facts justify a maximum of $60 a week.

Senator DOUGLAS. That is the position of the American Federation of Labor?

Mr. KIBRE. Yes, we noted that yesterday. We are happy to know that they have taken a similar position.

Now, I just want to touch briefly on the question of the maximum weekly benefits. Before I do so, since actually the whole question of the policy lying behind this has been a subject of some discussion, I would like to if I may bring the attention of the committee to a short statement from the last annual report of the Secretary of Labor.

I think it bears on this whole question of policy. This is not in my prepared statement. If I may I would like to read this short portion of the 1954 annual report:

The Secretary had this to say:

For the coming year the Secretary has selected workmen's compensation as a field of special emphasis. This choice is particularly timely because workmen's compensation benefits have fallen far behind increases in wages, and living costs.

Most injured workers thus suffer acute financial hardships along with their injuries.

The workmen's compensation laws usually base compensation on two-thirds the worker's average weekly wages. They also set maximum dollar limitations on weekly and total benefits.

When compensation laws were originally passed, the dollar limitations on benefits were sufficiently high so that the workers usually received a percentage specified. Today the picture is entirely different. Although in recent years benefits have been increased somewhat by liberalization of weekly and total maximum, they have not kept pace with rising wages and increased costs. The dollar limitations on maximum payments usually operate to nullify this statutory percentage. Far from receiving the proportion of its wage loss that the percentage would indicate, it has been estimated that the worker temporarily disabled usually receives only one-third of his wage loss. The worker gets so little that often benefits must be supplemented by relief.

That is the end of the quotation.

I think this reiterates the basic policy to the effect that actually benefits are intended and were intended to be 66⅔ percent of the worker's average weekly earnings. Certainly we find this true, when we examine the data and records behind the passage of the Longshoremen and Harbor Worker's Act in 1927. It is very clear from an examination of those hearings that the basic determinate of benefits was intended to be 66⅔ percent of the worker's wages.

Now, we find that for example on the west coast that longshore wages or wages for longshoremen average at approximately $100, and we submit tables on that.

Senator DOUGLAS. That is for a full-time week?

Mr. KIBRE. That is actually average earnings according to information from the employers. You will notice exhibit 1 of our statement gives the records from the Pacific Maritime Association for the first 4 months of 1955, for the full year of 1954, and for the full year of 1953. Now, it so happens on the west coast that because of the hiring hall procedures which equalize employment opportunities that the average wages indicated here truly reflect the average earnings of each particular longshoreman. It is quite appropriate to say that on the west coast the average longshoreman is earning a weekly wage of approximately $100.

That would indicate, of course, that the ceiling then, if we carry out the two-thirds principle, should certainly be at least $60, if not above $60. Sixty dollars in our opinion would actually be the barest minimum application of the two-thirds percent principle.

We also call attention to the fact that in 1949 Congress at that time applied in a very liberal fashion the two-thirds principle to the Federal Employees Compensation Act. I may point out that it was largely as a result of the work of the distinguished chairman of the subcommittee that that law was passed, containing in very liberal fashion that two-thirds percent principle.

Senator DOUGLAS. I would like to enter a disclaimer that I had anything to do with that. I had very little to do with the passage of that act.

Mr. KIBRE. We note, for example, that in the Federal act the maximum there is $525 per month. That would mean, of course, that all Federal employees earning up to $787.50 a month would be entitled and are entitled to receive two-thirds of their weekly wages. This means, then, that the overwhelming proportion of Federal employees are actually getting two-thirds of their weekly wages in benefits.

Now, we feel, of course, that what Congress did for the Federal employees should be done for the longshoremen, and for the other workers covered by this act.

With respect to the waiting period, we certainly endorse the features in the Magnuson-Morse bill with respect to shortening the waiting period. I would like to comment very briefly on some of the points that have come out in the course of this testimony. The Under Secretary, for example, yesterday criticized the shortening of the waiting period, particularly the 14-day period before benefits become retroactive. I think it can be shown very clearly that the entire trend in this field of social insurance has been in favor of shortening the waiting period. We, of course, submit data to indicate this with respect to States, and with respect to the Provinces of Canada.

But I think also it is pertinent to point out that private insurance companies with respect to insurance policies for accident and disability have actually eliminated any kind of a waiting period.

Now, if it can be done in that field, it certainly can be done in the field of occupational injuries.

I also want to point out that the point that has been raised here, that a 14-day retroactive period, or a period of 14 days before benefits become retroactive is not going to encourage malingering, particularly from a practical standpoint. I think it is true that the average person who is subject to the act when he is drawing benefits for disability, for a short period particularly, is under the supervision of a doctor, and generally those doctors are named by the insurance companies. I think it follows that the insurance company doctors are certainly going to protect their interests and they are going to see that the men do not have any opportunity to malinger. I think another point needs to be stressed here, and that is that the whole theory behind the act is the idea of providing the men with 66⅔ percent of their wages.

A waiting period, for example, of a week before benefits become available cuts into that basic theory and certainly curtails the actual amount of benefits that a man is going to receive. A shortening of the waiting period obviously is in line with the trend of providing the men with two-thirds of their weekly wages.

With respect to scheduled indemnities and the fact that the Magnuson-Morse bill increases the schedule for loss of an arm and loss of a limb, we certainly endorse this as well. Of course we point out that the proposed schedule is identical with the schedule in the Federal Employment Compensation Act.

We also call attention to the fact that increased indemnities are particularly needed for longshoremen. After all, a longshoreman is using his hands and his arms in his trade. He needs those hands and those arms. In the event he loses an arm or a hand or a leg, he is no longer able to work as a longshoreman. This would require, of course, an adjustment to some new trade and it would require a period of training and so on. Therefore, more liberal indemnities are particularly justified for longshoremen.

The question of changing the death benefits as provided in the Magnuson-Morse bill are largely technical. It is a matter of bringing into correlation with the new proposed maximum and new proposed minimum the computation of death benefits.

Now, we come to the question of the maximum limitation on certain benefits. We certainly endorse that feature of the Magnuson-

Morse bill which would eliminate section 14 (m) which now provides a limitation upon total compensation for certain classes of disabilities.

I think we should know that most of the classes of disabilities which fall under this limitation have built-in limitations. In most instances we find that the men are under the care of doctors or that there are other built-in stops for the actual amount of compensation. Therefore, section 14 (m) only can serve as an arbitrary cutoff for actual benefits.

I think here again we note that there has been a growing trend for the elimination of these arbitrary limitations.

I think, also, we must note that unless section 14 (m) is repealed, or is substantially revised upward, the increase in the weekly benefits and the amount of the weekly benefit will have little meaning for the average person under the act. We feel the most equitable operation of the act will be served by the complete elimination of this section.

The other bill before the committee which calls for the liberalization of the special fund, that is, S. 1308, we feel will accomplish very good purposes and we endorse this bill and urge its approval by the committee.

Finally, let me just say this, that we feel that what Congress did in 1949 for the Federal employees certainly must be done now and should be done now with respect to the people covered by the Longshoremen and Harbor Workers' Act. We certainly subscribe to the idea that the Federal Government is the proper agency to show the leadership in this field, and that when the Federal Government moves, then there will be far greater opportunity for the States to bring their compensation standards up to the proper levels with respect to the 66⅔ percent principle.

In that sense, we certainly urge approval by this committee of S. 2280, the Magnuson-Morse bill, with the exception, of course, that we urge the $60 maximum.

Now, I would like to suggest, if I may, that Mr. Stern present to the committee a few brief examples of how the act is working out at the present time. I may say that Mr. Stern handles the welfare claims in San Francisco, and so he has had a great deal of experience with typical cases.

Senator DOUGLAS. Will you give your name, please?

Mr. STERN. My name is Julius Stern, S-t-e-r-n, and I am the welfare officer for the San Francisco local of the International Longshoremen and Warehousemen's Union. For the past 8 years, 1 of my assignments is to represent injured longshoremen that have injuries within the province of the Longshoreman's Act.

In the past 8 years we have had wage increases along with other segments of organized labor and we have an adequate pension plan and a welfare plan. It is becoming increasingly plain that injured longshoremen who have a disability that may extend for 3 or 4 months, have hardships financially; not only to themselves but to their families. On many, many occasions, an injured longshoreman with 3 or 4 children has to seek and obtain supplemental aid from State and local agencies. We feel the act was not intended to serve that purpose.

For example, a man with 4 or 5 children who has a living standard of probably 70 or 80 dollars a week, whose earnings have been 5 to 6 thousand dollars a year for the past 3 or 4 years, is suddenly restricted

to $35 a week. In 2 or 3 months savings are gone. If he has friends he may be able to obtain a loan. But most longshoremen, particularly those of foreign extraction, do not have the opportunity to obtain loans and so they must seek the aid of public welfare agencies.

In many instances they lose their homes, and they lose their cars which they need for transportation.

Senator DOUGLAS. Are these actual cases that you are talking about?

Mr. STERN. These are actual specific cases. I have a list that I would be very happy to furnish.

Senator DOUGLAS. Would you care to furnish them?

Mr. STERN. Yes; I have a list over on the desk.

Senator DOUGLAS. Would you furnish them for the record? They will be printed in the record.

Mr. STERN. I would be happy to.

(Cases read into record subsequently.)

Mr. STERN. I not only handle compensation cases for San Francisco, but other ports in northern California, and again we run into the same problem. We feel that the other sections of the act, as you heard from Mr. Kibre, are also in accord. As a matter of fact, Mr. Chairman, I was asked to come here specifically by some widows of longshoremen who were killed, knowing the act isn't going to be retroactive and help them, but they thought it might possibly help others.

It is probably understood that longshore work is extremely hazardous. The accident rate is high, and we have an excellent safety program; but even so, there will be accidents. We feel that the amendments are long overdue, and we would appreciate very much the favorable consideration of your committee.

Senator DOUGLAS. All right.

Mr. KIBRE. If I may, I think that Mr. Stern has some actual cases that might be submitted for the record and I think it would be very interesting for the committee.

Mr. STERN. Do you want to take the time of the committee to read these?

Senator DOUGLAS. If you wish to.

Mr. KIBRE. This is a case labeled "IMA," a longshoreman aged 48, injured back on January 16, 1955, married, has 6 children. His earnings prior to injury were $112 per week. He is still disabled. Three months after injury he was forced to apply for public welfare. He now is receiving $25 per week from Aid to Needy Children, and in addition to his weekly compensation of $35 per week. He has debts in excess of $1,000 since his injury. That is a typical case.

Here is another one with a heading "Mr. F," a longshoreman, aged 53, sustained fractured ribs on February 14, 1955, married, has no children. He is supporting wife and parents of his wife. Disabled 12 weeks. His earnings before the injury were $108 per week. He assumed debts of $700 during the disability. He exhausted savings of $500, and is now $200 in debt.

Here is another typical case, labeled "Mr. G," a longshoreman, aged 51, married, 2 children. He is buying a home and an automobile. He was injured November 1, 1954, and it was a leg injury, with an operation on the kneecap. He is still disabled. A second operation may be necessary. He has lost his home and his car. He has been forced to move in with relatives. His wife is now ill. Assistance from public welfare pending. Has debts exceeding $1,600.

These are three typical cases which have gone through Mr. Stern's office.

Mr. STERN. Thank you, sir.

Senator DOUGLAS. Very well.

Mr. KIBRE. This is Mr. Frank M. Andrews.

Mr. ANDREWS. I come from the 14th compensation district and, to give you a little background, I have 30 years in the industry. I have been of that 30 years some 25 years on either the district or the international board that sets policy.

I became vitally interested in the law a few years back. I had my hand smashed between the coal man and a load, and I realized the inadequacy of the law, and I want to deal now particularly with the part for the loss of a limb or a leg or sight.

I was hurt under the original act, $25. I received a 50 percent loss of the hand which allowed me 106 weeks at $25. That is $2,650 I received. I actually took a terrific beating. I couldn't go back, and I was a side runner in a gang, and I had to take other work—lighter work. It meant a loss of one-third of my earnings. It doesn't take much stretch of the imagination to figure out that in about 3 years you used up what you got out of your hand, and the rest of the time I followed in the industry, I will just take that loss.

If it was $35; if I had been under that schedule I would have received $3,710. Or if I had been under the schedule proposed now, I would have received $6,100.

Senator DOUGLAS. How much did you actually receive?

Mr. ANDREWS. $2,650.

I am restricted now to the type of work I can do. I cannot go and do what I did before, because I haven't got the grip in my hand, and that means I can't work in the hold of a ship. It has to be other work, and on the waterfront there is no such thing as light work. I haven't found it, if there is.

As far as that is concerned, we find the head, and hand, and arm, and leg, and back injuries are the key injuries that the longshoreman gets, and if he gets them he takes a big percentage loss. That is, especially backs, hands, and legs. It is a terrific loss he takes.

Even if we had the best schedule that has been worked out here, and I thoroughly agree with this amended bill here, I think it is a big step in that field.

There is a particular thing I want to say in regard to what we propose, the $60. In the 14th district I would say roughly 80 percent of our people are homeowners now. All of our men come out of a registered hiring hall and each man has equalized earnings and he has equal opportunity. In my port I will cite for example that from the first of this year, between the high- and low-work opportunity of the man, it was $37. That has carried forth since 1934. That is all the difference in work opportunity from the high man to the low.

Senator DOUGLAS. You do not have the shapeup system?

Mr. ANDREWS. No, we have a hiring hall, and registered men, and you have to be registered, and those registered men have an equal opportunity for the work. They are called when they are low, and if they reject it they are charged just the same as though they took it; they are charged with what that job produces, and then the casual work—there is one thing about these figures of $99 that is very incorrect. Casuals are figured in those figures, and I negotiate and I

know. I have negotiated contracts for a good many years, or helped to negotiate them. The casual employees that work in the peak loads, the wages are figured in there, and they have no registration right in the industry. In other words, they just get what is left over, in the peak loads.

So that it would be higher than that in the figures. I am sorry that I do not have with me some of the weekly check stubs, but here——

Senator DOUGLAS. I will say the American system of free collective bargaining has done very well by the longshoremen.

Mr. KIBRE. We fully subscribe to that.

Mr. ANDREWS. Here is an injured worker, from local 10, and his name is James Ingram. Here is one week's check stub, his total hours for that week was 37 hours, overtime an hour and a half, and his take-home for that week was $130.94.

Here is another week for the same man. He had 40 hours and a half, and his pay earnings were $130.94. The next week it was $141.

Senator DOUGLAS. These are take-home figures before deduction for taxes?

Mr. ANDREWS. These are gross figures before deductions. Out of the last one I read you, he paid $10.44 withholding tax, and $1.41 DI tax, and the OSI was $2.83.

In another week he had 48 hours and a half, and he had $172.92 gross.

In another week he had 39 hours and a half and $138.38.

Another week he had 44 hours of overtime and 1 hour of straight time, and he had $154.04.

Another week it was 39 hours and 1 hour of straight, 1 hour overtime, $137.67.

In the last week he had 46 hours and three-quarters, and he had $160.79.

This was before this man was injured. He is now injured. He gets $35 a week to meet the commitments he has. I will say very frankly to the committee and I want to make it plain, we have advocated American standard of living for our people, and we believe we are entitled to it, and I will say the men go in debt for the things they want for their families. The consequences are when an accident happens to you, it is just too bad. It is like they say, they lose their homes and their cars, and they go in debt, and we feel that this bill with the $60 that we advocate would come somewhere near meeting the gap of what the law means and intends.

I personally know of many cases, hardship cases, because the $35 won't begin to meet the commitments that the men have.

Senator DOUGLAS. I wondered if you didn't make a verbal slip on 1 or 2 of the earnings. You mentioned in 1 case that a man had 1 hour of straight time and 39 hours of overtime.

Mr. ANDREWS. His gang evidently that week worked that many. He worked nights, and maybe they were low, and the dispatch gives them the best job, and that gives them the overtime job, and so that week they had overtime work. Maybe the other week where it was all straight time he had 39 hours straight time—Well, you can figure it out, that week his gang was evidently high, so the jobs they got were the least valuable. It equalizes out.

The hours were reduced, and in my port I can speak very plainly, the hours are reduced. We get time and a half for overtime, and so

if I work nights, I get charged an hour and a half for every hour of overtime I put in.

Senator DOUGLAS. You mean you get paid?

Mr. ANDREWS. But also on the equalization of earnings, it is charged, so there is no difference. I could work all of the nights and holidays I wanted, but I couldn't get any advantage of the other fellow that works straight time.

Mr. KIBRE. It is a system of equalizing actual earnings, so if a particular man has a low earning at a particular time, he is the first one to go out, and it is called the low-man-out system, as a matter of fact.

Senator KENNEDY. How do you get registered to be on the list?

Mr. ANDREWS. Under the arbitration award of 1934, after the big strike, the Government arbitration board set up a procedure and 3 employers and 3 employees were a part of that. They registered the men at that time. All of the men that had been in the industry were entitled to full registration. Then we met jointly, and it depends on the size of the port, and in my port maybe once a month or once every 6 weeks and in bigger ports it is once a week that the committee meets and they handle any disagreements, and they handle the whole run of the hiring hall, and they handle the registration lists.

Senator KENNEDY. Suppose I moved to California and wanted to become a longshoreman, how would I get on the list?

Mr. ANDREWS. Every so often they have a notice put out, and posted on the employers' premises, and posted in the union hall, and posted in the joint hall, that they are going to accept so many secondary registered men, or we would call them permit men, but under the rules we call them secondary registered. If you met the qualifications of that joint committee, the joint labor relations committee, then you are secondary registered, and then after a period of time when more men are needed fully registered in the industry, if you meet those specifications and you do your work, and you have the makings of a qualified longshoreman, you get on the full registered list.

Senator KENNEDY. How many men are now registered as primary men?

Mr. KIBRE. Approximately 16,000.

Senator KENNEDY. How many secondary?

Mr. ANDREWS. That would vary according to the port needs. In the port of Seattle, there are 600. In my port it is a small port of 135 men, and we have 6.

Senator KENNEDY. How many new men have been accepted in the last year as primary?

Mr. ANDREWS. I can tell you since 1952 we have taken 35. You see, the old men got retired under the pension program, and there were deaths or men leaving the industries, and we keep a static flow in my port, and we have steady hands. That is Olympia, Wash. We have steady gangs and we have so many men to fill those gangs.

Senator KENNEDY. If business drops off, of course, then you drop the secondary list.

Mr. ANDREWS. According to seniority, and the fully registered can be dropped, but they have the first opportunity to come back when we reregister according to seniority.

Mr. KIBRE. The object, if I may say, Senator, is to try to maintain a realistic relationship between the work force, and the actual

workload. For example, in the last week or 10 days in San Pedro some 200 men, as I understand, have been added to the registration list by the joint labor relations committee. In order to provide additional gangs to meet an increased workload in that particular port, that was done.

Senator KENNEDY. Is that secondary?

Mr. KIBRE. That is added to the actual registry; I don't have the exact data available.

Mr. ANDREWS. Your statement is correct.

Senator KENNEDY. You say the employers are represented on the joint board?

Mr. ANDREWS. He has 50 percent, and the only advantage is that we have the choice of the dispatchers, and we elect them by referendum ballot, the men that dispatch. But he is under full orders of the joint labor relations committee.

The entire operation of the hiring hall, and of the registration list, is under the joint control of the labor relations committee, on which the employers and representatives of the union are equally represented.

Senator KENNEDY. I had one other question. Several years ago I introduced a bill, which came very close to passing the House Labor Committee, giving the Secretary of Labor the power to set increased safety standards, and the Coast Guard objected to it.

Mr. KIBRE. We are very much in support of that legislation.

Senator KENNEDY. As I remember, the longshoremen were next to mining and lumbering in terms of occupational hazard. I wondered whether in the last year or two there had been any improvement.

Mr. ANDREWS. I would like to comment on that. I had a great deal to do with that. We used to have a Pacific Coast Safety Standard. Then when hard times overtook us before 1934, and 1933 when we reorganized, the employer dropped it from the industry. I fought continuously on the International Board and in the negotiating committee to get it reestablished. I finally succeeded in getting the full backing of our committee on our side. It took us 3 sessions, 3 different contract periods, before we got it reenacted. It is all right. It governs only those ships and companies, however, that are contract members. We cannot do a thing with the foreign line ships.

For instance, I will cite a Greek ship comes in or a Japanese ship comes in, or a Panamanian ship, or any country foreign that comes in to our port. The procedure is that we look it over, and if she doesn't look good, we make them take down the booms and look at the gear. We know before we go down there, we furnish all of the dead ones, our union. The employer doesn't, nor the shipping line. They will let you work with anything.

I will cite what happened here not so long ago. A ship came in from Japan and I walked aft, and one of the men said—I am on the labor relations committee of my local—and he said "You had better have a look at the boom of No. 3 hatch." I looked up on that and you could put your hand through the holes rusted right in the boom and it is branded right on it "This is 5 ton." We lowered that boom down and called for the safety engineer to come down from Seattle, and took the boom off, and stopped all work, and put a new boom on. That is what you run into. It is the same thing with all of the rigging. You have to watch it on the foreign bottoms.

It isn't true with all countries. Some shipping line in foreign countries are very good. I would say very much in praise to the Norwegian and Swedish ships that come in. They have beautiful equipment and it is well kept up. But other lines, some branches of the British shipping, are very bad, too.

Senator KENNEDY. Except in the cases of explosion, does the Coast Guard do anything about safety on these ships?

Mr. ANDREWS. I have never been able to get them interested.

Mr. KIBRE. We do have a safety code now which is a part of our contract. It was placed in the contract in 1949. We do maintain in each port active joint safety committees representing the employers and the union. This, for example, is a weekly or monthly report for northern California for the month of January and it might be of interest to the Senators to examine this.

(The report referred to follows:)

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, PACIFIC MARITIME ASSOCIATION

Job level Safety Committee

LONGSHORE ACCIDENT ANALYSIS, NORTHERN CALIFORNIA AREA, JANUARY 1955

Employee committee members: Samuel Clifton, cochairman, Thomas Silas, A. A. Spencer, E. McLauchlin.

Employer committee members: R. H. Torstenson, cochairman, Eddie Leebody, Toby Silverstrich, Charles McNeill.

	Ship	Dock	Total
Struck by falling, sliding, rolling, or thrown object	14	3	17
Slips, trips, falls	30	6	36
Caught between objects (legs; hands; feet; body)	18	7	25
Striking against objects	5	1	6
Sprained back (hand handling)	5	1	6
Sprains (miscellaneous)	4	0	4
Foreign object in eye	1	2	3
Struck by dropped object	15	11	26
Struck by slingload; sling; cargo hook; running rig	10	4	14
Struck by hand hook, hand tool	2	0	2
Vehicle collision	1	1	2
Splinters; jaggers; metal straps; sharp objects	5	5	10
Slippery oil spots	0	0	0
Nails	5	0	5
Miscellaneous	2	2	4
Total January accidents	117	43	160

Total January compensable accidents (over 7 days lost time)	30
Total January compensable accident frequency (men injured per million man-hours worked)	41.2
Back injuries	14
Toe injuries	9

Let's make every week a "safe" week—watch those slips and falls

Mr. KIBRE. At the same time we fully recognize the need of strengthening section 44 of the Longshoremen and Harbor Workers' Act which was the intent of your bill, Senator Kennedy. We fully subscribe to that, and we have long sought to get legislation along those lines.

Senator KENNEDY. You don't think it can be handled by collective bargaining?

Mr. KIBRE. To a limited extent it can be handled as we have on the west coast, but we feel also there is needed a Federal agency which

can impose industrywide safety standards and which can make continuing studies with the object of reducing the hazards of the industry.

Senator KENNEDY. It seems to me that it might be more economical along with this bill to consider this problem of giving the Secretary additional powers to enforce safety standards. It would probably save the employers more money in the final analysis.

Mr. KIBRE. We fully subscribe to those sentiments.

Mr. ANDREWS. On one phase of it, you have complete boiler inspection for the engineroom and that equipment, but when you get on deck anything can go on certain of these foreign lines. There is no way of checking them. You call the Coast Guard as we did on 1 ship, with faulty winches and they never should have been run at all to hoist cargo with, and 5 days after the ship sailed to sea the Coast Coast Guard showed up. You just don't tie a ship up and say that you aren't going to work it. We try to meet as near as we can a safety standard and protest, because good labor relations nowadays isn't tying ships up. It is getting the ships in workable condition so the men are as safe as possible. There are enough hazards anyway in the industry.

I know in my period of time in 30 years, I have been 5 times stove up with losses. I know what effect it has on men.

Mr. KIBRE. To explain the only reason we didn't raise this question of safety standards before the committee, perhaps I might paraphrase Shakespeare and say it is not that we didn't want safety legislation less, it is that we wanted legislation on benefit standards more at this particular time. We fully support the long efforts of the Senator and others to bring about a program of effective safety standards operated by the Secretary of Labor.

Mr. STERN. I wonder if I could ask the Chairman a question. I wonder what would happen here if we advocated the same thing as the railroad workers have, to come under the Federal Employers Liability Act. I think the employers would strongly object to any position like that, if we took it.

Senator DOUGLAS. Are you making that a request?

Mr. STERN. No, it is just asking the question, sir.

Senator DOUGLAS. I am not in a position to answer it.

Mr. KIBRE. I think we would be satisfied with the enactment of the Magnuson-Morse bill.

Mr. ANDREWS. There is one other point I wanted to touch on. I heard some testimony that surprised me. I heard a man say that if you cut the time down to 3 days and the retroactive feature to 14 days, there would be a malingering. I wonder what kind of men he thinks we have. A man can make $150, from $100 to $150 and he is going to stay off the job. One day's work makes him $28, one normal night or day's work on the average. It will average out around $28 if he gets that day. We don't work steady but if he misses 1 day that is more than his 3 days would come to under the Federal act, even with this new regulation. So the malingering, I haven't found it and I have handled quite a few cases in the 14 districts since I got hurt. I took an interest in it then. I don't find malingering.

Maybe it is because we have a little different set of conditions on the west coast. I don't find our men wanting to malinger. They want to get back on the job where the money is. They are going

in debt all of the time they are drawing it. That has been my experience with the act.

Senator DOUGLAS. Do you have further testimony?

Mr. KIBRE. That is all, and may I thank you.

Senator DOUGLAS. Is Mr. Ralph Dewey here?

STATEMENT OF RALPH S. DEWEY, REPRESENTING THE PACIFIC-AMERICAN STEAMSHIP ASSOCIATION

Mr. DEWEY. I just have a letter to file on behalf of the Pacific-American Steamship Association.

Senator DOUGLAS. That will be filed for the record.

(Mr. Dewey's prepared paper follows:)

PACIFIC AMERICAN STEAMSHIP ASSOCIATION,
San Francisco, Calif., June 22, 1955.

Re Longshoremen's and Harbor Workers' Compensation Act, proposed amendments—S. 1646, et al., 84th Congress.

Hon. PAUL H. DOUGLAS,
Chairman, Subcommittee on Labor,
Committee on Labor and Public Welfare,
United States Senate, Washington, D. C.

MY DEAR SENATOR DOUGLAS: Thank you for your telegraphic invitation, dated June 17, 1955, to the June 24 hearings by your subcommittee on the above subject.

This letter is presented on behalf of the American-flag steamship operators on the Pacific coast, represented by this association, for inclusion in the record.

The following comments are offered with respect to the items proposed in the legislation:

1. Reduction of waiting period from 7 to 3 days

You are referred to Bulletin No. 161 of the United States Department of Labor, dated September 1954, the latest compilation on the subject available to us. Table 5, pages 20 and 21, shows that 34 of 38 States have a waiting period of 7 days; 1, a period of 6 days; 4 States and 1 Territory, a waiting period of 5 days; 1 State, a period of 4 days; and 7 States and 1 Territory, a period of 3 days.

We respectively recommend to your subcommittee that the full 7-day waiting period be retained. We believe that a 1-week waiting period is a reasonable safeguard against abuses of such a system, which abuses are harmful to legitimate claimants as well as to the industry in which they are employed; and that an examination of the history of the development of the various acts in the various States will indicate that it was originally adopted as, and has operated as, a reasonable safeguard without substantial injustice resulting.

Your subcommittee is also asked to consider the fact that this qualification of the absolute imposition of liability on the employer, regardless of the question of the exercise of due care on his part, is, in fact, a qualification on the public policy itself which excuses the employee from the requirement of a showing of negligence.

2. Reduction from 49 days to 14 days of the total number of disability days required to permit retroactive compensation for full period

You are referred again to the same table mentioned above. The range shown in the table goes from no provision on the subject and from 5 days to 7 weeks, the 7-week period being in effect only in the case of longshoremen under the act you are considering and in the case of the District of Columbia. Variation is such that we do not feel it offers a pattern. However, it is apparent that the average is substantially below 49 days.

However, in view of the various qualifications in the periods involved, as shown in the table mentioned, we believe that the total period should not be changed. This qualification, also, on the absolute liability of the employer regardless of the question of negligence is again a measure of the degree to which the policy of absolute liability was adopted.

3. Increase in weekly maximum compensation from $35 to $50

You are referred to table 7, pages 24 and 25, of the above-mentioned document, in which it will be noted that maximum payments range from $20 per week to $175 per week, with the majority of them appearing to be in the range of $30 to $35.

It is recognized that basic provisions in all or most of the acts call for compensation up to two-thirds of the average weekly wage, and that if that measure were used today in most of the jurisdictions involved, it would exceed the average weekly wage. It, therefore, will undoubtedly be argued that the fundamental philosophy is to compensate up to two-thirds of the weekly wage and that, therefore, the maximum limit should be at or near a figure equaling two-thirds.

We do not believe it is a valid assumption that the use of the two-thirds formula in the acts necessarily means that legislative intent was to compensate to that degree, particularly when the formula is coupled with dollar maximums. Again, this entire subject is developmental in character, and we believe that there is ground for belief that the legislative intent in many of the jurisdictions is to have a twofold formula, one of them, because of its limiting character, operating independent of the other. Pacific coast operators do, nevertheless, feel that, because of the present average weekly wages of longshoremen on the Pacific coast substantially exceeding the figure that would result from the two-thirds formula, an adjustment should be made in this provision. We therefore suggest that your subcommittee adjust this figure to $40 per week in the Longshoremen's and Harbor Workers' Act. This will bring it into conformity with California, Minnesota, and Utah, all of which, since the publication of the above-mentioned bulletin, have adjusted to that figure.

Your particular attention is also directed to the footnotes following that table which vary the total amount according to the number of dependents, marital status, question of invalid or noninvalid capacity of male spouse, and with other qualifications depending upon rehabilitation, dependencies, etc. You are also reminded that other variations in the acts relating to other benefits do not make this measure absolute among the various States.

4. Adjusts upward the schedule of compensation payments for permanent partial (schedule) injuries to a level that they were at before reductions in 1934

In this connection you are referred to table 9, pages 29 and 30, in the same document. It will be noted that the proposed legislation would bring the Longshoremen's and Harbor Workers' Act into conformity with the benefits offered to Federal employees in respect of every schedule injury listed, and that in the vast majority of cases the number of weeks of compensation which would thereby be provided far exceed that in the various States. It is recommended that no change be made in the schedule.

5. Increases from $37.50 per week and $12.50 per week to $75.00 per week and $30.00 per week, respectively, the minimum and maximum weekly wages on which is to be computed compensation to be paid to survivors on the basis of percentage of weekly wages

For the same reasons as mentioned in item 3, above, it is suggested that your subcommittee give consideration to recommending that the present figures of $37.50 and $12.50 be increased to $42.50 and $15 respectively.

6. Repeals entirely the $11,000 limitation benefit payments for permanent partial disability

Your subcommittee undoubtedly has before it the fact that this section was amended in 1948, at which time all limitations were taken out in the case of death and permanent total disability, and at which time the remaining limit on permanent partial disability was increased from $7,500 to $11,000. Again, we respectfully point out to your subcommittee that the retention of a limitation in this connection is a measure of the degree to which the principle of absolute liability has been accepted. With the elimination of the limit on death and permanent total disability and with the increase to $11,000 in recent years, it is the recommendation of our directors that there be no further adjustment at this time.

In submitting this information, we recognize the possibility that there may have been more amendments to various State acts since the date of the publication of the above-mentioned bulletin than have been mentioned by us. Also, we believe that your subcommittee fully recognizes that there are variations throughout the various acts with respect to benefits under one or more sections which do not permit the use of these tables as inflexible rules of comparison.

We appreciate the opportunity of submitting this material to your subcommittee for consideration.

Very truly yours,

R. E. MAYER, *President.*

Senator DOUGLAS. That completes the list of witnesses. No one else has requested to appear and the hearings are therefore closed.

The subcommittee will meet at an appropriate time.

(By direction of the chairman, the following is made a part of the record:)

SHIPBUILDERS COUNCIL OF AMERICA,
New York 6, N. Y., June 23, 1955.

Subject: Pending bills, S. 594, 1307, 1308, 1646, proposing amendments to the benefit provisions of the Longshoremen's and Harbor Workers' Compensation Act.

Hon. PAUL H. DOUGLAS,
Chairman of the Subcommittee on Labor,
Committee on Labor and Public Welfare,
United States Senate, Washington 25, D. C.

DEAR SENATOR DOUGLAS: The Shipbuilders Council of America is an association representing a majority of the activities of the shipbuilding and ship repairing industry of the United States. Ship repairing members of the council are vitally concerned with the proposed bills, in view of the fact that employment in this branch of the industry is covered by the act which the pending bills would amend.

Obviously it is not easy to criticize proposals to increase benefits payable to disabled employees or their dependents. Of course, such benefits should be as generous as is possible and the members of the council feel it is quite unfortunate that they are forced by the depressed condition of their industry and other factors to strongly object to the enactment at this time of any and all legislation which would increase the costs of shipyard operation by raising compensation benefits.

The maritime industry of the United States is in a most critical stage. It is an ailing industry in comparison with other enterprises in this country. Also, it faces in the future ever increasing competition from abroad. Ship repairing is a basic part of our maritime industry.

If the benefit increases proposed in the pending bills are enacted it is inevitable that repair costs in this country would be increased, thus placing American ship repairing yards and ship operators at an even greater disadvantage with respect to foreign competition, than at present.

Except for S. 1308 enlarging the uses to which the special statutory benefit fund may be put, the bills listed for consideration deal almost entirely with amendments which would increase the benefits payable under the act, and, in each instance, the proposed amendments would increase the benefits payable to a level far above that set by the workmen's compensation statutes of any of the coastal States, including that of the State of New York.

Federal compensation legislation, which applies only to certain groups in a limited number of States, that is, the maritime States, should be reasonably consistent with the well-considered State laws of much broader application.

Workmen's compensation is a statutory departure from the traditional rules of law regarding the liabillty of one person for personal injury or death sustained by another. At common law, a person is normally answerable for the injury or death of others only when guilty of some fault or negligence causing such injury or death, and subject to the qualification that the person seeking recovery is not himself chargeable with contributory fault or negligence. Workmen's compensation statutes depart from this traditional principle of tort liability. Fault or guilt is no longer pertinent where workmen's compensation statutes are in force.

The employer's liability for injuries and deaths arising out of and in the course of employment is made absolute. So, also, he is made liable for diseases and infections such as arise naturally or unavoidably from such employment.

Even where the harm results from the negligence of a third party or from the negligence of the employee himself, the employer is made liable under the compensation statutes. Overall estimates indicate that at least 85 percent, if not more, of the statutory compensation awards are made to employees in cases where the employer is wholly without fault and where, except for the statutes, there would have been no liability. Recovery by the employee becomes almost automatic. Employees and their beneficiaries are relieved of the necessity and expense of suing their employers for injuries or loss of life arising out of the employment

Of course, where the employer has failed to procure compensation, the employee may sue. In such case, however, the employer is deprived of his common law defenses.

Workmen's compensation statutes make the employer's liability certain. The risk of industrial accidents becomes a known and definite cost of doing business. The limitation provisions of the compensation statutes make the employer's liability a certain determinable operating cost, to the same extent that taxes, rent, wages and other expenses are a part of his operating costs.

The Longshoremen's and Harbor Workers' Compensation Act is applicable to employers of persons engaged in maritime employment, in whole or in part, upon the navigable waters of the United States, employers in the District of Columbia, and employers at foreign defense bases.

Under the act, an injured employee is entitled to full medical care made necessary by his injury, without restriction or limitation. Under the compensation laws of some States, medical care is allowed only within stipulated limits.

Under the Longshoremen's Act, an injured employee receives two-thirds of his average weekly pay, limited, however, to a minimum of $12 or a maximum of $35 per week, as compensation during the disability period. Where the disability is permanent but partial, he receives two-thirds of his average weekly wage during any period of total disability, plus stated sums for such misfortunes as the loss of an arm, or leg, etc. Employees are not permitted to make any contribution to the cost of medical care to which they are entitled and, as previously stated, the liability of the employer exists without regard to whether the employee was, in whole or in part, guilty of any fault or negligence.

The total payments for temporary total disability or permanent partial disability are limited to $11,000 under the present act. Death and permanent total disability payments are unlimited in aggregate amount. Thus, injured employees may receive the full amount of any medical care required by an injury, disease, or infection covered by the act, plus a maximum of $11,000 on account of temporary total disability or permanent partial disability, or an unlimited amount in case of permanent total disability.

If the injury, disease, or infection results in death the survivors receive their benefits computed independently of anything the employee may have received. The survivors' benefits are not subject to any aggregate limitation in amount.

Although operative in a large number of coastal States, the act under consideration is not actually nationwide legislation. It merely fills gaps in the various State compensation laws and operates concurrently with the local laws. It is very important, therefore, that consideration be given to the existing laws of those States where the Federal act has application side by side in the same plant with the State statutes.

Based on information published by the United States Department of Labor, Division of Labor Standards, 2 exhibits have been prepared comparing the laws of 25 maritime States with the Longshoremen's Act. These exhibits give the status as of September 1954. With respect to benefits for temporary total disability (exhibit A), it is interesting to note that in 18 of the 25 maritime States, the maximum payment per week is the same or lower than provided in the present Longshoremen's Compensation Act, and, in no case has the State maximum been raised to the figure ($50 per week) contemplated by any of the pending bills. In fact, except for Connecticut where the limit is $40, no State provides for a maximum of over $35, except where there are dependent children in addition to the wife.

An examination of exhibit B will show that with respect to weekly death benefits as of September 1954, in 17 of the 25 maritime States the maximum was the same or lower than the Federal act. Here, also, none of the States elected to fix a figure nearly as high as that proposed by the pending bills ($50 per week) and except for Connecticut where the limit is $40 per week no State provides for a maximum of over $35 except where there are dependent children in addition to the widow.

It is requested that the attached exhibits A and B be made an integral part of this statement and of the record.

The pending bills would greatly increase the benefits payable under the act. The maximum would be raised from $35 to $50 per week.

It is also proposed that the present $11,000 limit in case of temporary disability and permanent partial disability he removed.

As has been previously noted, it is not easy to criticize proposals to increase benefits payable to disabled persons or their survivors. The normal human reaction to cases of industrial injury or death is to make the benefits as generous

as possible rather than to restrict them. One cannot say dogmatically that the benefits for industrial injury or death ought to be this amount or that amount. We are necessarily limited to a consideration of the economic practicability of the proposed benefits.

Workmen's compensation is not intended as a substitute for private insurance against disability, any more than social security is intended to supplant private savings and life insurance. Workmen's compensation, like social security, is intended only to provide a modest supplementary benefit in the event of industrial injury or death. It is a levy against industry, which is payable without regard to fault or negligence. These considerations have undoubtedly been given local evaluation by the legislatures of the several States when enacting their individual statutes.

It is submitted that Federal compensation legislation, which applies only to certain groups of employees in a limited number of States, viz: the maritime States, should be reasonably consistent with well-considered State laws of much broader application. The proposals embodied in the various bills would increase benefits under the Federal act far above those provided by existing State laws.

In connection with the proposed removal of the $11,000 maximum limitation for temporary disabilities and permanent partial disabilities, it is necessary to bear in mind the important distinction between the amount of weekly benefit payments and the maximum of total liability in any one case. In the first instance, the bill proposes to increase the weekly disability benefits from a maximum of $35 to $50 per week. In the second case, the bill would increase the maximum liability to which the employer may be exposed, in any one case, from $11,000 to an unlimited amount. The aggregate effect could increase compensation costs by an immeasurable amount.

Under the present act with respect to disabilities which are not total, the employer assumes, with respect to each employee, a definite liability. The proposed bill would create a situation wherein the employer, who provides a job for a maritime worker (or for any worker in the District of Columbia) for a single day, would automatically assume a contingent liability for an indeterminable sum of money. The greatest risk, unfortunately, would be presented by the worker with the greatest number of dependents, that is, the worker who is usually in the greatest need of a job. Such an employee would be a bad employment risk compared with the worker with few or no dependents. On the other hand, where, as now, the liability is fixed at a stated maximum, the risk of affording employment is not related to the number of persons dependent upon the employee. The amount of the risk is known, and the employer can make provisions against it.

It must also be appreciated, in connection with the pending bills, that wages in the ship-repairing industry are now at such a high level that practically all repair-yard compensation cases would involve payment of the maximum proposed weekly benefits. The differential between the benefits, as presently prescribed by the Longshoremen's and Harbor Workers' Compensation Act, when compared to those now provided under the concurrently applicable State acts, does not seem to justify any such increases or other changes in the Federal act as are now proposed.

In view of the foregoing, it is urged that neither the proposed drastic increases in benefits nor the repeal of the limitation of liability for disability be enacted.

Respectfully submitted.

L. R. SANFORD, *President.*

EXHIBIT A

Benefits for temporary total disabilities (maritime States), as of September 1954

State	Maximum percentage of wages	Maximum period in weeks	Maximum weekly payments	Total maximum stated in law
Alabama	55 to 65 [1]	300	$23	$6,900.
California	61¾	240	$35	$8,400.
Connecticut	60	(2)	$40	(3).
Delaware	60	(2)	$30	(3).
Florida	60	350	$35	(3).
Georgia	50	350	$24	$8,400.
Illinois	75 to 97½ [1]	(2)	$29 to $38 [1]	$8,000 to $10,750.[1]
Louisiana	65	300	$30	(3).
Maine	66⅔	500	$27	$10,500.
Maryland	66⅔	312	$35	$5,000.
Massachusetts	66⅔	(2)	$30 and $2.50 for each dependent.[4]	$10,000.
Michigan	66⅔	500	$32 to $42 [1]	(5).
Mississippi	66⅔	450	$25	$8,600.
New Hampshire	66⅔	319	$33	$10,500.
New Jersey	66⅔	300	$30	(3).
New York	66⅔	(2)	$36	$6,500.
North Carolina	60	400	$30	$8,000.
Ohio	66⅔	312	$32.20	$6,000.
Oregon	50 to 66⅔ [1]	(2)	$25.38 to $45	(3).
Pennsylvania	66⅔	700	$32.50	$20,000.
Rhode Island	60	(2 6)	$32	$16,000.[6]
South Carolina	60	500	$35	$8,000.
Texas	60	401	$25	(3).
Virginia	60	500	$27	$10,800.
Washington		(2)	$23.08 to $42.69.[1]	(3).
Longshoremen's Act	66⅔	(2)	$35 [7]	$11,000.

[1] According to number of dependents.
[2] Period of disability.
[3] No aggregate amount.
[4] Maximum limited to average weekly wage.
[5] Not to exceed 500 times total weekly amount payable.
[6] After 1,000 weeks, payments to be made life from second injury fund.
[7] Additional benefits in specific cases such as vocational rehabilitation, constant attendant, and so forth.

Based on table 7, bulletin No. 161, page 24 of the State Workmen's Compensation Laws as of September 1954, U. S. Department of Labor.

EXHIBIT B

Benefits for fatal injuries (maritime States) as of September 1954

State	Maximum percentage of wages	Maximum period in weeks	Maximum weekly payments	Total maximum stated in law
Alabama	65	300	$23	$6,900.
California	61¾	200 to 316	$35 to $43.75	$7,000 to $8,750.
Connecticut	60	780 [3]	$40	(1).
Delaware	65	312	$15 to $32.50	(1).
Florida	60	350	$35	(1).
Georgia	42½	300	$20.40	(1).
Illinois	97½	(2)	$29 to $38	$8,000 to $10,750.
Louisiana	65	300	$30	(1).
Maine	66⅔	300	$27	$8,000.
Maryland	66⅔	500	$25	$10,000.
Massachusetts		400 [3]	$20 and $5 for each child.	$10,000.
Michigan	66⅔	400	$32 to $40	(1).
Mississippi	66⅔	450	$25	$8,600.
New Hampshire	66⅔	319	$33	$10,500.
New Jersey	60	300 [3]	$30	(1).
New York	66⅔	(4)	$26 to $40	(1).
North Carolina	60	350	$30	$8,000.
Ohio	66⅔	416	$32.20	$9,000.
Oregon		(4)	$18.46 to $39.23	(1).
Pennsylvania	66⅔	350 [3]	$20.50 to $32.50	(1).
Rhode Island	60	600	$18 and $2 for each child.	(1).
South Carolina	60	350	$35	$8,000.
Texas	60	360	$25	$9,000.
Virginia	60	300	$27	$8,100.
Washington		(4)	$23.08 to $40.38	(1).
Longshoremen's Act	66⅔	(4)	$18.38 to $35	(1).

[1] No aggregate amount.
[2] No maximum period.
[3] Thereafter, payment to children until 18.
[4] Widowhood, or to children until 18.

Based on table 11, bulletin No. 161, p. 35 of State Workmen's Compensation Laws as of September 1954, U. S. Department of Labor.

THE MARITIME ASSOCIATION OF THE PORT OF NEW YORK,
New York 4, N. Y., June 29, 1955.

Re S. 2280, Longshoremen's and Harbor Workers' Compensation Act to provide increased benefits in cases of compensable injuries.

Hon. PAUL H. DOUGLAS,
Chairman, Subcommittee on Labor of the
Senate Committee on Labor and Public Welfare,
Senate Office Building, Washington, D. C.

DEAR SENATOR DOUGLAS: The Maritime Association of the Port of New York respectfully submits the following comments in connection with S. 2280, which would amend the Longshoremen's and Harbor Workers' Compensation Act to provide increased benefits in cases of compensable injuries. Our association is an 82-year-old trade association comprised of members in every phase of the maritime industry in the port of New York. A large portion of our membership consists of companies whose employees are covered by this act.

As representatives of this employer group, it seems almost needless to say that we take no issue with the basic concept of workmen's compensation. We fully subscribe, of course, to this means of providing needed financial relief, prescinding from the element of negligence, when an employee is injured in the course of his employment. We also subscribe to the philosophy that a review of the compensation provided by law is fitting from time to time, so that appropriate adjustments can be made in the benefits provided.

The two major adjustments that would be brought about by S. 2280 would be to increase the minimum and maximum benefits under the existing law for accidents resulting in a temporary total disability, and also to increase the number of compensable weeks applicable to accidents of partial permanent disability.

Accordingly, the question submitted for consideration is whether or not the combined increases provided for in the proposed act are fair and reasonable.

We respectfully submit that the combined increases provided for are excessive and unreasonable.

The benefits for total temporary disability would be increased from a minimum and maximum of $12 and $35 a week, respectively, to $20 and $50 respectively. Thus these benefits would be increased by approximately 43 percent.

The benefits provided for permanent partial disability are governed by a schedule setting forth a designated number of compensable weeks in conjunction with a stated maximum of dollars payable per week. The bill presently being considered would increase the number of weeks for which compensation is payable from between 11 to 60 percent, depending on the nature of the injury. The new maximum of $50 a week, instead of $35 a week would also be applicable for the stated number of weeks.

The excessiveness which we submit that would result from the present proposal results not only from the augmentation of rates and weeks, but most of all from the dollar and cents cumulative effect of combining the two elements. It is possible to demonstrate instances in which the dollar value of compensation awards would be increased anywhere from 50 to 250 percent.

We respectfully submit that this dollar percentage increase should make it self-evident that the proposal is excessive and unreasonable.

We believe that any upscaling in the present law should in some substantial measure reflect recent reviews of this question by State legislatures.

As late as July 1954 New York increased weekly maximum benefits from $32 to $36 a week. We submit that in a broad sense, employers of those covered by Federal compensation law are in competition with others in the same community whose employees are covered by State law.

We respectfully submit that any increase considered fair and just by this committee should be scaled down considerably to bring the total compensation payable somewhere in line with comparable New York State awards.

Yours very truly,

WILLIAM F. GIESEN,
General Manager and Counsel.

AMERICAN MERCHANT MARINE INSTITUTE, INC.,
Washington 6, D. C., June 27, 1955.

Re Longshoremen and Harbor Workers Compensation Act, proposal to increase benefits.

Senator PAUL H. DOUGLAS,
Chairman, Subcommittee on Labor,
Committee on Labor and Public Welfare,
United States Senate, Washington 25, D. C.

DEAR SENATOR DOUGLAS: The American Merchant Marine Institute represents a majority of American-flag steamship companies. As you are undoubtedly aware, the shipping industry is in an extremely difficult financial condition. Its inability to compete with low cost foreign-flag operations in the face of steadily rising domestic costs has resulted in the severe reduction in the number of American ships operating in the foreign and intercoastal trades. At the present time the House Committee on Merchant Marine and Fisheries is making an extended study of measures which may be adopted to save an American merchant marine capable of meeting the needs of our commerce and national defense.

It is unnecessary to elaborate upon the fact that the proposal now before your committee to increase the benefits under the Longshoremen's and Harbor Workers' Compensation Act would require the shipping industry to assume very substantial additional costs, thereby making the problem of survival more difficult.

We do not argue that the act and benefits thereunder must always remain static. As a matter of fact, it is the duty of Congress to consider changes in the act in the light of present-day conditions. We sincerely believe, however, that the proposals before you providing for very considerable increases in benefits are unnecessary at this time. It should be pointed out that the proposals for a maximum benefit of $50 are greatly in excess of the comparable benefits provided under the State laws in New York and California, the States in which the majority of longshoremen and harbor workers are employed. This discrepancy can lead to severe inequities.

We recommend therefore that the maximum benefits proposed by your committee be fixed in the light not only of existing State maximums but also in view of the effect a large increase will have on the American merchant marine.

Respectfully submitted.

HERBERT R. O'CONOR.

WILMINGTON SHIPPING CO.,
Wilmington, N. C., June 24, 1955.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
Unted States Senate, Washington, D. C.

DEAR SIR: We are greatly disturbed as to the intent of S. 594 and S. 1646 which have been introduced for the purpose of amending the Federal Longshoremen's and Harbor Workers' Compensation Act. We feel that the enactment of this legislation would constitute a serious hardship on the shipping industry, and we hope very much that unfavorable action will be taken on these measures.

In this connection we enclose herewith a certified copy of resolution adopted by stevedoring companies in the ports of Wilmington, N. C., and Morehead City, N. C., which we believe you will find self-explanatory.

Very truly yours,

PETER B. RUFFIN, *President.*

RESOLUTION OF STEVEDORE OPERATORS, PORTS OF WILMINGTON, N. C., AND MOREHEAD CITY, N. C.

Whereas the Federal Longshoremen's and Harbor Workers' Compensation Act as presently constituted covers injuries sustained by longshoremen and other maritime workers while engaged on board vessels in United States ports; and

Whereas these same longshoremen and other harbor workers are covered by compensation laws of their respective States when they suffer injuries while working on shore; and

Whereas the maximum weekly benefits under the said Federal Longshoremen's and Harbor Workers' Compensation Act already are in excess of the benefits under compensation laws of most States, and are substantially equal to the benefits under the New York compensation law on which the Federal Compensation Act was based; and

Whereas there have been introduced into Congress two bills, S. 594 and S. 1646, which would have the effect of increasing the maximum weekly benefits under the Federal Compensation Act by 42.8 percent from $35 to $50 and would also increase other benefits under such authority by substantial amounts; and

Whereas such greatly increased benefits, referred to above, would cause the Federal Compensation Act to be out of line with the New York act, and even further out of line with acts of other States, and would have the effect of placing a terrific financial burden on the shipping industry, which is already suffering from extremely high costs and foreign competition: Now, therefore, be it

Resolved, That the Wilmington Shipping Co., Heide & Co., Inc., and Morehead City Shipping Co., all of which are engaged in stevedoring activities in the ports of Wilmington and Morehead City, N. C., take this occasion to go on record as strongly opposed to any increase in the benefits payable under the Federal Longshoremen's and Harbor Workers' Compensation Act, including the proposed increases under S. 594 and S. 1646, and do respectfully request the Congress of the United States to refrain from enacting this legislation; and be it further.

Resolved, That copies of this resolution be sent to the Senators from the State of North Carolina and to various Congressmen from the State of North Carolina: And be it further

Resolved, That the Wilmington Shipping Co., Heide & Co., Inc., and Morehead City Shipping Co. direct appropriate letters to Senators and the Congressmen from North Carolina requesting each of them to vote against such legislation and work toward its ultimate defeat.

Certified to be a true copy of resolution unanimously adopted by Wilmington Shipping Co., Heide & Co., Inc., and Morehead City Shipping Co. in meeting on this 23d day of June 1955.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, LOCAL 32,
Everett, Wash.

Hon. WARREN G. MAGNUSON,
Senate Office Building, Washington, D. C.

DEAR SIR: Enclosed is a petition that was signed by practically every member of this local.

The purpose of the petition is to petition Congress for changes and amendments to the Longshoremen's and Harbor Workers' Compensation Act.

The compensation that waterfront workers receive has lagged way behind the costs of living and the regular increases that have been granted in wages.

Therefore we think that we have good reason to petition Congress for amendments to this act.

Yours sincerely,

I. E. STEVENS, *Secretary.*

RESOLUTION

We the undersigned longshoremen respectfully petition Congress to amend the Longshoremen and Harbor Workers Compensation Act. Whereas, there is now before the present 84th Congress several bills to amend the Longshoremen and Harbor Workers Compensation Act. Therefore in order to make our desires known we respectfully suggest the following recommendations:

Section 6 should be amended, shortening the waiting period before benefits begin from 7 days to 3 days and from 49 days to 7 days.

Section 7 should be amended to allow free choice of any licensed doctor.

Increase benefits in all categories. Note this has not been done for several years.

Section 14 should be amended by cutting out the following words in section 14, subparagraph E: "Or unless such nonpayment is excused by the deputy commissioner after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment." Note the way the act is now written is useless because the commissioner always gives the 10 percent penalty away.

Section 19 should be amended by adding the following, "On any written request from either the Deputy Commissioners Office or the carrier, for prehearing, regular hearing, or request to travel for medical examination other than in the hometown of injury, employee shall receive reasonable expenses, which shall include taxi fares, when needed. Failure of the carrier to provide in advance payment of at least 5 days, shall be justifiable reason in refusing to appear. Such injured employee shall be entitled to have at least one witness of his own choosing who shall be paid by the carrier."

B. Section 19, subsection H, should be amended so the injured employee shall be given free choice to have his own physician participate in an examination at the cost to the carrier not to expect an injured employee to pay for examination. Experience has proven the carrier physicians will favor the carrier since they are in their employ.

Section 28 should be amended to read "In event of a hearing before the Deputy Commissioner or lawsuit the injured employee, if he wins the case, should be awarded attorney fees and other costs in addition to any other awards."

Note not as now written, "Be a lien upon compensation."

The Deputy Commissioner established practices is to limit the fee so small that attorneys can't afford to represent the injured employee in claims is unjust and discriminatory. Invarably the insurance company is represented by able council with no fee limits.

(A list of the signers of this petition has been retained in the subcommittee files.)

HAMPTON ROADS MARITIME ASSOCIATION,
Norfolk 10, Va., June 23, 1955.

SUBCOMMITTEE ON LABOR OF THE
SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE,
Senate Office Building, Washington, D. C.

GENTLEMEN: Our attention has been called to hearing which will be conducted by your committee on this date on Senate bill 1646, to increase certain benefits payable under the Longshoremen's and Harbor Workers' Compensation Act.

A committee of the Hampton Roads Maritime Association, which is an organization representing commercial, maritime, industrial, and other business interests in the Hampton Roads, Va., area has carefully examined the provisions of the several bills which have been introduced to amend the Federal Longshoremen's and Harbor Workers' Compensation Act, including S. 1646, and the following is its report and recommendations, which were approved by the board of directors of this organization, meeting on May 27th, 1955:

"It is the feeling in your committee that any increase in compensation presently allowed to stevedores and longshoremen for personal injuries must ultimately be borne by the shipowner and thus increase the cost of operation of vessels using this port, at a time when the cost of operation of American-flag vessels has risen to the point that it is extremely difficult for these vessels to compete with foreign-flag vessels. Furthermore, it is the belief of your committee that such legislation is adverse to the interests of stevedores and longshoremen themselves since it would result in fewer vessels using the port, with an ultimate loss of earnings on the part of the workers themselves. For these reasons, it is the recommendation of your committee that this association take a stand in opposition to any new legislation, the object of which would be to increase the compensation presently paid to injured stevedores and longshoremen. It is felt that the present compensation rates are adequate and in line with comparable State workmen's compensation rates."

Yours very truly,

H. M. THOMPSON,
Executive Vice President.

NEW YORK SHIPPING ASSOCIATION, INC.,
SAFETY BUREAU,
New York 4, N. Y., July 11, 1955.

Re S. 1646, 2280.

Senator PAUL H. DOUGLAS,
Chairman, Subcommittee on Labor of the
Senate Labor and Public Welfare,
Senate Office Building, Washington, D. C.

DEAR SENATOR DOUGLAS: In accordance with the permission granted to me, at the close of my statement at your subcommittee's hearing on June 23, I am enclosing a supplementary statement giving our views on the matter of rehabilitation.

Since my appearance before your committee we have had an opportunity of further considering S. 2280, particularly with regard to the increased cost involved. The combination of increased weekly benefits and the increased scheduled awards, plus the cancellation of the limiting of certain costs, would mean an overall increase of over 100 percent in the total cost for accidental injuries occurring to persons covered by the Longshoremen's and Harbor Workers' Compensation Act.

As you no doubt are aware, the cost of workmen's compensation insurance is one of the factors used in determining the charges made by contracting stevedores for the work performed for steamship companies. If that cost increases, it will probably be reflected in increased ocean freight rates.

If this happens the ultimate effect will be to increase the cost of American goods to foreign purchasers and the American producer may thus find it much more difficult to meet foreign competition for his product. We therefore urge your committee to give careful consideration to the possible adverse effect of this legislation on world trade.

Yours very truly,

G. H. E. BUXTON, *Director.*

SUPPLEMENTARY STATEMENT ON BEHALF OF NEW YORK SHIPPING ASSOCIATION, INC., RE S. 1646

Section 3 of S. 1308 would amend the Longshoremen's and Harbor Workers' Compensation Act to authorize more effective use of the special fund provided for in section 44 by permitting its use for rehabilitation of injured workers where such services are not available otherwise.

We agree that rehabilitation services should be provided in any case where qualified medical opinion recommends that such treatment would be helpful to the injured employee. However, we do not believe that such services should be administered by either State or Federal Governments. Much has been written on the subject of rehabilitation and we find many instances in which the medical profession supports our position. For example:

Total Rehabilitation—A Problem for the Patient, Physician, Management, and the Community, by Donald A. Covalt, M. D. Quoted in 19th Annual Meeting, Industrial Hygiene Foundation Transaction Bulletin No. 28.

Rehabilitation Centers, by Stanwood L. Hanson and The Kabat-Kaiser Institute, by O. Leonard Huddleston, M. D., Ph. D. Quoted in Bulletin 172, Workmen's Compensation Problems, United States Department of Labor.

Rehabilitation in Workmen's Compensation, by Dr. Alexander P. Aitken. Quoted in Bulletin 167, Workmen's Compensation Problems, United States Department of Labor.

Early Referral—The Key to Rehabilitation, by M. William Zucker, Ph. D. Quoted in Studies in Workmen's Compensation, published by Commerce & Industry Association of New York, Inc.

We believe, also, that the rehabilitation of an injured employee is a matter which requires highly specialized medical skill, available only at an institution designed specifically for this purpose, which includes constant and close attention.

The fund provided for in section 44 of the Longshoremen's and Harbor Workers' Compensation Act is made up of contributions received from employers and is merely in the custody of the Treasurer of the United States but is not money or property of the United States. The Administrator has the right to authorize the Treasurer to disburse moneys from this fund. It is our view that payments from this fund might be made in the case of injury to persons within the jurisdiction of the Longshoremen's and Harbor Workers' Compensation Act where such injury requires rehabilitation and such services are not available otherwise.

(Whereupon, at 12 o'clock noon, the subcommittee was recessed subject to call.)

×