

**H.R. 1329, RECREATIONAL
MARINE EMPLOYMENT ACT
OF 2003**

HEARING

BEFORE THE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS
OF THE
COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

July 15, 2004

Serial No. 108-69

Printed for the use of the Committee on Education and the Workforce



Available via the World Wide Web: <http://www.access.gpo.gov/congress/house>
or
Committee address: <http://edworkforce.house.gov>

U.S. GOVERNMENT PRINTING OFFICE

94-935 PDF

WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON EDUCATION AND THE WORKFORCE

JOHN A. BOEHNER, Ohio, *Chairman*

Thomas E. Petri, Wisconsin, <i>Vice Chairman</i>	George Miller, California
Cass Ballenger, North Carolina	Dale E. Kildee, Michigan
Peter Hoekstra, Michigan	Major R. Owens, New York
Howard P. "Buck" McKeon, California	Donald M. Payne, New Jersey
Michael N. Castle, Delaware	Robert E. Andrews, New Jersey
Sam Johnson, Texas	Lynn C. Woolsey, California
James C. Greenwood, Pennsylvania	Rubén Hinojosa, Texas
Charlie Norwood, Georgia	Carolyn McCarthy, New York
Fred Upton, Michigan	John F. Tierney, Massachusetts
Vernon J. Ehlers, Michigan	Ron Kind, Wisconsin
Jim DeMint, South Carolina	Dennis J. Kucinich, Ohio
Johnny Isakson, Georgia	David Wu, Oregon
Judy Biggert, Illinois	Rush D. Holt, New Jersey
Todd Russell Platts, Pennsylvania	Susan A. Davis, California
Patrick J. Tiberi, Ohio	Betty McCollum, Minnesota
Ric Keller, Florida	Danny K. Davis, Illinois
Tom Osborne, Nebraska	Ed Case, Hawaii
Joe Wilson, South Carolina	Raúl M. Grijalva, Arizona
Tom Cole, Oklahoma	Denise L. Majette, Georgia
Jon C. Porter, Nevada	Chris Van Hollen, Maryland
John Kline, Minnesota	Tim Ryan, Ohio
John R. Carter, Texas	Timothy H. Bishop, New York
Marilyn N. Musgrave, Colorado	
Marsha Blackburn, Tennessee	
Phil Gingrey, Georgia	
Max Burns, Georgia	

Paula Nowakowski, *Staff Director*
John Lawrence, *Minority Staff Director*

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

CHARLIE NORWOOD, Georgia, *Chairman*

Judy Biggert, Illinois, <i>Vice Chairman</i>	Major R. Owens, New York
Cass Ballenger, North Carolina	Dennis J. Kucinich, Ohio
Peter Hoekstra, Michigan	Lynn C. Woolsey, California
Johnny Isakson, Georgia	Denise L. Majette, Georgia
Ric Keller, Florida	Donald M. Payne, New Jersey
John Kline, Minnesota	Timothy H. Bishop, New York
Marsha Blackburn, Tennessee	George Miller, California, <i>ex officio</i>
John A. Boehner, Ohio, <i>ex officio</i>	

C O N T E N T S

	Page
Hearing held on July 15, 2004	1
Statement of Members:	
Biggert, Hon. Judy, Vice-Chairman, Subcommittee on Workforce Protec- tions, Committee on Education and the Workforce	2
Prepared statement of	2
Keller, Hon. Ric, a Representative in Congress from the State of Florida ..	3
Prepared statement of	4
Kucinich, Hon. Dennis J., a Representative in Congress from the State of Ohio, prepared statement of	33
Owens, Hon. Major R., Ranking Member, Subcommittee on Workforce Protections, Committee on Education and the Workforce	6
Statement of Witnesses:	
Greenway, Ian R., LIG Managers, Inc., St. Petersburg, FL,	21
Prepared statement of	22
Hebert, Kristina, Vice President of Operations, Ward's Marine Electric, Inc., Ft. Lauderdale, FL	7
Prepared statement of	10
McGarrah, Robert E., Jr., Coordinator for Workers' Compensation, AFL- CIO, Washington, DC	16
Prepared statement of	17
Nelson, Larry, Vice President, Administration, Westport Shipyard, Inc., Westport, WA	12
Prepared statement of	13

H.R. 1329, RECREATIONAL MARINE EMPLOYMENT ACT OF 2003

Thursday, July 15, 2004
U.S. House of Representatives
Subcommittee on Workforce Protections
Committee on Education and the Workforce
Washington, DC

The Subcommittee met, pursuant to notice, at 10:10 a.m., in room 2175, Rayburn House Office Building, Hon. Judy Biggert [Vice-Chairman of the Subcommittee] presiding.

Present: Representatives Biggert, Keller, Kline, Owens, and Payne.

Ex officio present: Representative Miller.

Staff Present: Stacey Dion, Professional Staff Member; Kevin Frank, Professional Staff Member; Danielle English, Professional Staff Member; Ed Gilroy, Director of Workforce Policy; Richard Hoar, Staff Assistant; Don McIntosh, Staff Assistant; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Deborah L. Samantar, Committee Clerk/Intern Coordinator; Kevin Smith, Communications Advisor; Jo-Marie St. Martin, General Counsel; Jody Calemene, Minority Counsel Employer-Employee Relations; Margo Hennigan, Minority Legislative Assistant; John Lawrence, Minority Staff Director; Marsha Renwanz, Minority Legislative Associate; Peter Rutledge, Minority Senior Legislative Associate/Labor; and Mark Zuckerman, Minority General Counsel.

Vice-Chairman BIGGERT. Good morning. The Subcommittee on Workforce Protections of the Committee on Education and the Workforce will come to order.

We are meeting here today to hear testimony on H.R. 1329, the Recreational Marine Employment Act of 2003. Under Committee rule 12(b), opening statements are limited to the Chairman and Ranking Minority Member of the Subcommittee. Therefore, if other Members have statements they may be included in the hearing record. I ask for unanimous consent for the hearing to remain open for 14-days to allow Members statements and other extraneous materials referenced during the hearing to be submitted in the official hearing record. Without objection, so ordered.

STATEMENT OF HON. JUDY BIGGERT, VICE-CHAIRMAN, SUB-COMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

The focus of today's hearing is H.R. 1329, the Recreational Marine Employment Act of 2003, a bill introduced by our colleague on the Subcommittee, Representative Keller. The bill will amend the Longshore and Harbor Workers' Compensation Act to exempt the Recreational Marine Industry from coverage under the Act.

The last time Congress addressed Longshore and Harbor Workers' Compensation was 1984. At that time, Congress determined that the individuals who build and service vessels 65 feet and under should not be covered by Longshore coverage, but protected under their State workers' compensation plan.

In the 20 years since Congress last addressed this issue, the recreational industry has changed dramatically. Americans want everything larger, from their vehicles to fast food and boats are no exception. Today, we ask, what was the size limitation that was placed in statute over 20 years ago, and appropriate to continue to allow the recreational industry to grow and compete.

The practical impact of this limitation has been for thousands of jobs to be lost to other countries because of the increased costs of doing business here at home.

Our witnesses today will share their perspectives on the economic conditions of the industry today. I would like to thank them for taking time out of their busy schedule to provide the Subcommittee members with their expertise and opinions on the legislation.

And I will yield the remainder of my time to my colleague from Florida, and the sponsor of H.R. 1329, Mr. Keller.

[The prepared statement of Vice-Chairman Biggert follows:]

Statement of Hon. Judy Biggert, Vice-Chairman, Subcommittee on Workforce Protections, Committee on Education and the Workforce

The focus of today's hearing is H.R. 1329, the "Recreational Marine Employment Act of 2003," a bill introduced by our colleague on the Subcommittee, Representative Keller. The bill would amend the Longshore and Harbor Workers' Compensation Act to exempt the recreational marine industry from coverage under the Act.

The last time Congress addressed Longshore and Harbor Workers' Compensation was 1984. At that time, Congress determined that the individuals that build and service vessels 65 feet and under should not be covered by Longshore coverage but protected under their state workers' compensation plan. In the 20 years since Congress last addressed this issue the recreational industry has changed dramatically.

Americans want everything larger now—from their vehicles to fast food, and boats are no exception. Today we ask, was the size limitation that was placed in statute over 20 years ago an appropriate to continue to allow the recreational industry to grow and compete? The practical impact of this limitation has been for thousands of jobs to be lost to other countries because of the increased cost of doing business here at home.

Our witnesses here today will share their perspectives on the economic condition of the industry today. I would like to thank them for taking time out of their busy schedules to provide the Subcommittee members with their expertise and opinions on the legislation.

At this time, I would like to turn over my remaining time to the sponsor of the legislation and my good friend from Florida, Mr. Keller.

**STATEMENT OF HON. RIC KELLER, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF FLORIDA**

Mr. KELLER. Well, thank you, Madam Chairman. And I want to especially thank our witnesses for being here today, two of whom, I see, are fellow Floridians. Welcome to all of you.

Let me begin by telling you the story of how I became interested in creating thousands of jobs in the recreational marine industry. A group of folks who work in the recreational marine industry in Florida came to my Orlando office. One built recreational boats. Another repaired recreational boats. And a third ran a marina. They all had something in common. All of them operated small, family owned businesses. All of them wanted to hire more employees, and expand their businesses. And all of them had one problem. That is, all of them were forced to pay unnecessary and exorbitant insurance premiums under the Longshore and Harbor Workers' Compensation Act.

Specifically, I learned that while workers in the recreational marine industry should be covered under the State workers' compensation laws, these employers, because of the legal technicality, were being forced to pay for Longshore insurance, which was three times more expensive than workers' compensation insurance in Florida. They showed me a recent survey, which indicated that employers in the recreational marine industry would save an average of \$99,000 per year if they were exempt from the Longshore Act, and that 95 percent of those employers said they would use the savings to create additional jobs. They told me that many jobs were being outsourced to the Bahamas, Canada and China, where their competitors didn't have to pay the Longshore insurance.

I told them that this was unacceptable, and I decided to file the Recreational Marine Employment Act. To put this hearing in perspective, let me briefly walk-through history of the Longshore Act. The Longshore Act was created by Congress in 1927 to cover workers in the commercial ship industry who became injured while working upon navigable waters. Specifically, it covered Longshoremen, that is people who load and unload cargo from commercial ships, and it covered workers who build or repaired ships.

In 1972, the Longshore Act was amended to extend coverage beyond those folks working upon navigable waters, to also include those individuals working on dry land, such as people working on a pier, or a dry dock.

In 1984, the Longshore Act was once again amended so that individuals who built or worked on boats that were under 65 feet long, would be covered by State workers' compensation laws, and not Longshore insurance.

This amendment was a positive development. It had the practical effect of exempting virtually all of the recreational marine industry from Longshore insurance. How? Because back in 1984, recreational boats over 65 feet were almost unheard of. Today, however, 20 years later, there are over 250,000 recreational boats that are 65 feet in length or longer. And my bill will provide a common sense update that will create jobs, and bring this law into the 21st-century. Now, and in the interest of straight talk, let me squarely address questions I have heard about this legislation.

First, will workers exempted from Longshore coverage be worse off? No. The truth is that State workers' compensation laws provide excellent coverage for workers in the recreational marine industry. For example, under the Longshore Act, if you are injured you would receive 66 2/3 percent of your salary. Under State workers' compensation laws, you receive that much or better in 48 out of 50 states. In fact, in many states, the benefits are far more generous under State workers' compensation. For example, in Iowa, if you were injured, under workers' compensation, you would receive 80 percent of your salary and a maximum weekly payment of \$1,133. In contrast, under the Longshore Act, you would receive a mere 66 two-thirds percent of your salary and a maximum weekly amount of only \$1,030.

The second question I have heard is whether people who work on recreational boats should have the same insurance as people who work on commercial ships? The answer is "no," because the risks are dramatically different.

For example, commercial ships are built using plate steel and welding, and assembly can be extremely dangerous. In contrast, most recreational boats are made using fiberglass shells and even OSHA recognized that the assembly process is just as safe as the one used to build cars or light trucks. Indeed, the OSHA statistics I've seen indicate that you were three times more likely to be injured while building a commercial ship than working on a recreational boat.

Moreover, with regard to recreational boats, the same OSHA statistics showed that it's no more hazardous to build a recreational boat of more than 65 feet, then it is to build one less than 65 feet.

For these reasons, and many others, my bill has many Democrat co-sponsors, including Martin Frost, Jim Davis, Rob Andrews and Norm Dix.

In summary, the Recreational Marine Employment Act is the first update of the Longshore Act in 20 years. It's about jobs. It's about common sense. And it's about time.

Madam Chairman, I yield back the balance of my time.

[The prepared statement of Mr. Keller follows:]

Statement of Hon. Ric Keller, a Representative in Congress from the State of Florida

Thank you, madam chairman. And I want to especially thank our witnesses for being here today, two of whom are fellow Floridians. Welcome to all of you.

Let me begin by telling you the story of how I became interested in creating thousands of jobs in the recreational marine industry. A group of folks who work in the recreational marine industry in Florida came to my Orlando office. One built recreational boats. Another repaired recreational boats. And a third ran a marina. They all had something in common. All of them operated small, family owned businesses. All of them wanted to hire more employees, and expand their businesses. And all of them had one problem. That is, all of them were forced to pay unnecessary and exorbitant insurance premiums under the Longshore and Harbor Workers Compensation Act.

Specifically, I learned that while workers in the recreational marine industry should be covered under the state workers compensation laws, these employers, because of a legal technicality, were being forced to pay for longshore insurance, which was three times more expensive than workers compensation insurance in Florida.

They showed me a recent survey which indicated that employers in the recreational marine industry would save an average of \$99,000 per year if they were exempt from the Longshore Act, and that 95% of those employers said they would use the savings to create additional jobs. They told me that many jobs were being

outsourced to the Bahamas, Canada and China, where their competitors didn't have to pay the longshore insurance.

I told them that this was unacceptable, and I decided to file the Recreational Marine Employment Act.

To put this hearing in perspective, let me briefly walk through a history of the Longshore Act. The Longshore Act was created by Congress in 1927 to cover workers in the commercial ship industry who became injured while working upon navigable waters. Specifically, it covered longshoreman, that is people who load and unload cargo from commercial ships, and it covered workers who built or repaired ships.

In 1972, the Longshore Act was amended to extend coverage beyond those folks working upon navigable waters, to also include those individuals working on dry land, such as people working on a pier, or a dry dock.

In 1984, the Longshore Act was once again amended so that individuals who built or worked on boats that were under 65 feet long, would be covered by state workers' compensation laws, and not longshore insurance.

This amendment was a positive development. It had the practical effect of exempting virtually all of the recreational marine industry from longshore insurance. How? Because back in 1984, recreational boats over 65 feet were almost unheard of. Today, however, twenty years later, there are over 250,000 recreational boats that are 65 feet in length or longer. And my bill will provide a commonsense update that will create jobs, and bring this law into the 21st century.

Now, in the interest of straight talk, let me squarely address two questions I've heard about this legislation.

First, will workers exempted from longshore coverage be worse off? No. The truth is that state workers compensation laws provide excellent coverage for workers in the recreational marine industry. For example, under the Longshore Act, if you were injured you would receive 66 and two-thirds percent of your salary. Under state workers compensation laws, you would receive that much or better in 48 out of 50 states. In fact, in many states, the benefits are far more generous under state workers' compensation. For example, in Iowa, if you were injured, under workers compensation, you would receive 80% of your salary and a maximum weekly payment of \$1,133. In contrast, under the Longshore Act, you would receive a mere 66 and two-thirds percent of your salary and a maximum weekly amount of only \$1,030.

The second question I've heard is whether people who work on recreational boats should have the same insurance as people who work on commercial ships? The answer is "no", because the risks are dramatically different.

For example, commercial ships are built using plate steel and welding, and the assembly can be extremely dangerous. In contrast, most recreational boats are made using fiberglass shells and even OSHA recognized that the assembly process is just as safe as the one used to build cars or light trucks. Indeed, the OSHA statistics I've seen indicate that you were three times more likely to be injured while building a commercial ship than working on a recreational boat.

Moreover, with regard to recreational boats, these same OSHA stats show that it's no more hazardous to build a recreational boat of more than 65 feet, than it is to build one less than 65 feet.

For these reasons, my bill has many Democrat co-sponsors, including Martin Frost, Jim Davis and Rob Andrews.

In summary, the Recreational Marine Employment Act is the first update of the Longshore Act in 20 years. It's about creating jobs. It's about common sense. And it's about time.

I yield back the balance of my time.

Vice-Chairman BIGGERT. Thank you very much.

Before I proceed, I would like to extend a warm welcome to the Ranking Member of the Full Committee, Congressman George Miller, who has joined us today. Mr. Miller has had a long interest, long-standing interest, in this program, and direct involvement with the last amendments to the program in 1984. So we're very pleased to have you with us today. Thank you.

And with that, I will yield to the distinguished Ranking Minority Member from New York, Mr. Owens, for whatever opening statement he may wish to make.

**STATEMENT OF HON. MAJOR R. OWENS, RANKING MEMBER,
SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COM-
MITTEE ON EDUCATION AND THE WORKFORCE**

Mr. OWENS. Thank you very much.

Madam Chairman, I would like to note that my staff has checked yachttraders.com on the Web, and found that used boats of 70 feet and longer are being sold for \$900,000 and much more. This is not the "Mom and Pop" recreational scenario which has just been presented by my colleague, Mr. Keller.

People are willing to pay more for boats, they want bigger boats, why do they want cheaper insurance?

Madam Chairman, I understand that the purpose of today's vital hearing is to examine the potential consequences of H.R. 1329, which has been introduced by Mr. Keller, to amend the Longshore and Harbor Workers' Compensation Act.

Let me make it very clear, at the outset, this hearing should also recognize the Longshore Act as a very important public law. By providing essential medical benefits, rehabilitation services, and compensation for lost wages, the Act ensures a vital safety net for maritime workers, when injured or killed on-the-job. The Longshore, Harbor, and other maritime workers covered by this Act are carrying out difficult and often very dangerous jobs. These workers and their families have more than earned the right to these hard-won protections.

A brief legislative history of the Longshore and Harbor Workers' Compensation Act is also important to note for the record. When first enacted in 1927, this Act covered those working on or in navigable waters, beyond the jurisdiction of State workers' compensation laws. Amendments in 1972 extend coverage to those working shore side to load, unload, repair, and build vessels. As a result, marinas and boatyards were required to buy Longshore insurance for their workers. Subsequently in 1984, a compromise package of amendments was ably crafted and enacted to exempt much of the marine recreational industry from the Act.

Let me repeat that for the record. The 1984 amendments exempted most of the marine recreational industry from the Act.

The benefits of those negotiations and the way in which that compromise was worked out, is not available to us in a brief hearing like this. We will not have a chance to look at and examine the nature of that compromise today.

It is my understanding that the bill introduced by Representative Keller seeks to undo the 1984 compromise. I would be strongly opposed to any effort to use this hearing as a mechanism for putting longshore and workers' compensation benefits on the chopping block.

Madam Chairman, I look forward to hearing from the witnesses.
Vice-Chairman BIGGERT. The gentleman yields back.

We don't usually have other Members make opening statements, but if the ranking member would care to?

Mr. MILLER. No.

Vice-Chairman BIGGERT. Fine. OK. Thank you.

With that, we will begin our panel of distinguished guests. Our first witness today is Ms. Kristina Hebert?

Ms. HEBERT. Hebert.

Vice-Chairman BIGGERT. Hebert. Ms. Hebert is Vice President of Operations, Ward's Marine Electric Company, a family business operating for over 54 years, with 42 employees that provide mobile dockside service, engineering, engraving and design services, and the distribution of marine electric equipment.

Ms. Hebert is also Vice President of the Marine Industries Association of South Florida representing over 800 marine-related businesses, and over 180,000 jobs.

Next, is Mr. Larry Nelson. Mr. Nelson has worked for Westport Shipyard for 22 years. Under his tenure the company has grown from 38 employees who build boats for the salmon industry to its current size of over 600 employees, who construct large recreational motor yachts. Westport Shipyard is recognized as the top builder in the U.S., and one of the top 15 worldwide.

Next on our panel is Mr. Robert McGarrah. Mr. McGarrah has been Coordinator for Workers' Compensation for AFL-CIO since 2002, where he works on all national and state programs to compensate injured workers, ranging from Homeland Security to State Workers' Compensation. He previously worked for AFL-CIO's President, John Sweeney, on health-care, contingent labor and election reform issues.

Finally, we will hear from Mr. Ian Greenway. Mr. Greenway is President and owner of LIG Marine Managers in St. Petersburg, Florida. Prior to his starting his own company, Mr. Greenway was a broker with Lloyd's of London for 25 years. He is the author of several publications, including Navigating Marine Insurance, and the second edition of Navigating Marine Workers' Compensation 2000.

Before our witnesses begin their testimony, I would like to remind the Members that we will ask questions after the entire panel has testified. In addition, Committee Rule 2 imposes a 5-minute limit on all questions.

And then, we will have lights for you, the witnesses, and allocate 5 minutes. If you don't get to all of your testimony, don't worry about it, I am sure that we will in the questions.

And so with that, we will begin with Ms. Hebert. You are recognized for 5 minutes.

STATEMENT OF KRISTINA HEBERT, VICE PRESIDENT OF OPERATIONS, WARD'S MARINE ELECTRIC, INC. FORT LAUDERDALE, FL

Ms. HEBERT. Good morning. Madam Chairperson, and Ranking Member Owens, thank you for giving me this opportunity. As mentioned, my name is Kristina Hebert. I am Vice President of Operations of my family's business, Ward's Marine Electric, Inc. We have been in business for 54 years. My grandfather started it and still comes to work about three times a week.

I stand before you today to ask that the recreational marine industry be removed from the Longshore and Harbor Workers' Compensation Act requirements, by extending the current exceptions for boats under 65 feet to encompass the entire universe of recreational boats.

Much of what I will describe for you today, regarding how work is performed and the risks that our employees face each today, is

no different than what is faced by skilled craftsmen performing work in similar non-marine highly skilled trades. For example, most boats are hauled out of the water when repair work is being done at a recreational marine facility. Travel lifts are used to simply pick up the boat and move it inside a shed, or further inland into a tent or shed. In some cases work is performed on a boat behind an owners' house. And finally, work is also performed at a marina where minor repairs and estimates are given.

Because our workers are not subject to the kinds of hazards found in commercial environments, such as a bustling commercial port or shipyard, it is appropriate and necessary that the recreational marine industry remain under the jurisdiction of State workers' compensation and be excluded entirely from the Longshore and Harbor Workers' Compensation Act.

This low risk environment can be further demonstrated by the amount and severity of injuries faced by our workers. At Ward's Marine Electric we have a claims/loss ratio for workers' compensation injuries that have been averaging less than 2 percent for the last 5 years. We pride ourselves on providing excellent training in a safe working environment for workers, which is demonstrated by our low accident rate. We strongly believe we can provide quality injury insurance for our employees by only purchasing State workers' compensation. We understand the necessity of Longshore insurance to protect Longshoremen, harbor workers and stevedores, along with others in the commercial shipbuilding and shipping repair segment of the industry.

However, it is important to understand that workers in the recreational marine industry are not exposed and do not encounter the same hazardous environments or the severity of injuries as those who work in commercial merchant ships and ports and shipyard. State workers' compensation is sufficient for industries, and as mentioned by Congressman Keller, in some instances, is more financially beneficial to the worker. The logic of removing the recreational marine employee from mandatory Longshore coverage is demonstrated by the minimal number of claims. For the recreational marine industry, Longshore coverage is duplicative and unnecessary. Our employees' claims can be adequately covered by state insurance coverage.

It is also important to note that the recreational marine industry is growing as the sizes of recreational vessels grow. The trend in growth of the typical vessel size has continued over the past 20 years. In 2003, the most stable segment of the industry, with an astonishing 11 percent growth rate, was the boats over 150 feet. For us at Ward's, where we choose to follow the law and provide coverage—proof of coverage for our workers, we must provide coverage for every marine facility in the county.

This is not to say that only boats over 65 feet are our community. It is just because boats over 65 feet have visited our community and all of our facilities. Once a marina or boatyard accommodates a boat over 65 feet, then all workers are subject to longshore exposure and must purchase the coverage or risk operating illegally. Unless the footage exemption was large enough to encompass every recreational boat built in the United States, these circumstances would not change.

Today the playing field is not level. We bill our skilled workforce at \$75 an hour, subtract an employees hourly pay, and of the remainder, \$54 is contributed per \$100 of payroll, to cover the Longshore premium. Given we cannot raise our labor rate if we want to remain competitive in the marketplace, we make very little profit on our workers who are engaged in servicing boats over 65 feet.

Further, if a company works on these larger boats, it cannot obtain State workers' compensation in the marine industry without Longshore insurance. For many of them, the choices is to purchase both State workers' compensation and Longshore, or purchase neither. I am sorry to say that faced with that choice, some are providing no coverage for their workers. However, if they had the option of providing only State workers' compensation, I would believe businesses would rush to provide coverage for their workers.

Due to the high cost of purchasing Longshore insurance premiums, businesses like ours have experienced negative consequences in competing for business. Boat owners often like to make one "port-of-call" and use one facility for all of their repairs. According to recent study in Broward County, Florida, 1400 boats not based in the county visit the area. Thirteen hundred of those will have work done in a boatyard with an average bill of \$140,000. These "out-of-town" boaters are important to the growth the recreational marine industry, and the servicing of such boats is a critical revenue and employment base for many states in the country.

Unfortunately, particularly in coastal states like Florida, this business is rapidly going overseas. In the case of Florida, and much of the Southeast, many boat owners are choosing to have work done in the Bahamas or the Caribbean. Service costs in the Caribbean and the Bahamas are lower. One of the main reasons is that employers there do not have to pay the extremely high cost of Longshore coverage and therefore can outbid American businesses. As an international parts distributor, Ward's Marine Electric is able to gauge the workloads of all of the ports of call because of the parts orders we receive.

While we are able to profit from the sale of equipment, the boat in industry and community suffer as a whole. Like most firms in the marine service industry, our company is a small business. If we want to remain competitive in the recreational marine industry, which includes a large percentage of boats over 65 feet the law requires us to purchase the insurance. It is a challenge of Ward's Marine Electric to compete due to the inability to provide competitive labor rates for those who do not purchase the coverage.

Let me conclude by saying that if the recreational marine industry was removed from Longshore and Harbor Workers Compensation Act requirements, employers like myself, Ward's Marine Electric would save \$200,000 a year. This money could instead be used to expand our services, increase our employees' wages, and hire more skilled workers. It would be a win-win for employers and employees alike. In order for the industry to prosper and grow, we ask for your support in expanding the exception of boats under 65 feet to encompass the entire universe of recreational boats. The recreational marine industry needs relief from this burdensome, costly and duplicative coverage.

Thank you, Members of the Committee, for bringing to this public forum an issue that is critical to our industry.

[The prepared statement of Ms. Hebert follows:]

Statement of Kristina Hebert, Vice President of Operations, Ward's Marine Electric, Inc., Ft. Lauderdale, FL

Introduction

Good morning, Chairman Norwood, ranking member Owens and Committee Members. Thank you for providing me with the opportunity to represent small recreational marine businesses and to testify before your Committee. My name is Kristina Hebert and I am Vice President of Operations and 3rd generation of my family's business—Ward's Marine Electric, Inc. We have been in business for over 54 years and we have 42 employees, sixteen of whom are American Boat & Yacht Council-certified marine electricians. Our company provides mobile dockside service, engineering, engraving and design services as well as distributes a complete line of marine electric equipment. Most of our service work is performed in marinas and boatyards where we act as subcontractors.

Aside from my work with Ward's Marine Electric, Inc., I am Vice President of the Marine Industries Association of South Florida (MIASF). Throughout the state of Florida, MIASF represents over 800 marine related businesses, such as builders, marinas and boat yards, repairers, services, dealers, and yacht brokers. Our industry represents over 180,000 jobs and generates over 14 billion dollars in economic impact to the economy of Florida. Accordingly, my remarks reflect the views of the Marine Industries Association of South Florida as well.

I sit before you today to ask that the recreational marine industry be removed from under Longshore and Harbors Workers' Compensation Act requirements, by extending the current exception for boats under 65 feet to encompass the entire universe of recreational boats.

Low Risk Environment

Much of what I will describe for you today, regarding how work is performed and the risks that our employees face each day, is no different than what is faced by skilled craftsmen performing work in similar non-marine highly skilled trades. For example, most boats are hauled out of the water when repair work is being done at a recreational marine facility. Travel lifts are used to simply pick up the boat and move it further inland under a tent or shed. In some cases work is performed on a boat behind an owners' house. Finally, work is also performed at a marina where minor repairs and estimates are given. Because our workers are not subject to the kinds of hazards found in commercial environments, such as a bustling commercial port or shipyard, it is appropriate and necessary that the recreational marine industry remain under the jurisdiction of state workers' compensation and be excluded entirely from the Longshore and Harbor Workers' Compensation Act.

Low Injury Rates

This low risk environment can be further demonstrated by the amount and severity of injuries faced by our workers. At Ward's Marine Electric we have a claims/loss ratio for workers' compensation injuries that has been averaging less than two percent for the last five years. We pride ourselves on providing excellent training and a safe working environment for our workers, which is demonstrated by our low accident rate. We strongly believe we can provide quality injury insurance for our employees by only purchasing state workers' compensation. We understand the necessity of Longshore insurance to protect longshoremen, harbor workers and stevedores, along with others in the commercial shipbuilding and ship repair segment of the industry. It is important to understand that workers in the recreational marine industry do not encounter and are not exposed to the same hazardous environments or the severity of injuries as the workers who work on commercial merchant ships in ports and shipyards. State workers' compensation is sufficient for our industry, and in many instances, is more financially beneficial to the worker. The logic of removing the recreational marine employee from mandatory Longshore coverage is demonstrated by the minimal number of claims. In fact, at Ward's we have never had a Longshore claim, yet we continue to pay the exorbitant cost just because we work on recreational boats which happen to be over 65 feet long. For the recreational marine industry, Longshore coverage is duplicative and unnecessary. Our employees' claims can be adequately covered by state insurance coverage.

Mixed Use Facilities

It is also important to note that the recreational marine industry is growing as the sizes of recreational vessels grow. The trend in growth of the typical vessel size has continued over the past 20 years. In 2003, the most stable segment of the industry, with an astounding 11% growth increase, was the over 150 foot market. For us at Ward's, where we choose to follow the law, we must provide proof of coverage for EVERY marine facility in the county. This is not to say that ONLY boats over 65 feet visit our community. It is just because boats over 65 feet HAVE visited our community and all of our facilities. Once a marina or boatyard accommodates a boat over 65 feet, then all workers are subject to Longshore exposure and must purchase the coverage or risk operating illegally. Unless the footage exemption was large enough to encompass every recreational boat built in the United States, the circumstances would not change.

High Cost of Longshore Coverage

Today the playing field is not level. We bill our skilled workforce at \$75 per hour, of that \$54 is contributed to cover the Longshore premium. Given that we cannot raise our labor rate if we want to remain competitive in the marketplace, we make very little profit on our workers who are engaged in servicing boats over 65 feet. Further, if a company works on these larger boats, it cannot obtain state workers' compensation in the marine industry without Longshore insurance. For many then, the choice is to purchase both state workers' compensation and Longshore, or purchase neither. I am sorry to say that faced with that choice, some provide no coverage for their workers. However, if they had the option of providing only state workers' compensation, I believe businesses would rush to provide coverage to their workers.

Competitive Disadvantage – International

Due to the high costs of purchasing Longshore insurance premiums, businesses like ours have experienced negative consequences in competing for business. Boat owners often like to make one "port-of-call" and use one facility for all of their repairs. According to a recent study in Broward County, Florida, an average of 1400 boats not based in the county visit the area annually. Of those, 1300 will have work done in an area boatyard with an average bill of \$140,000. These "out of town" boaters are important to the growth of the recreational marine industry, and the servicing of such boats is a critical revenue and employment base for many states in the country. Unfortunately, particularly for coastal states like Florida, this business is rapidly going overseas. In the case of Florida, many boat owners are choosing to have work done in the Bahamas and Caribbean. Service costs in Caribbean and the Bahamas are lower. One of the main reasons is that employers there do not have to pay the extremely high cost of Longshore coverage and can therefore outbid American businesses. As an international parts distributor, Ward's Marine Electric is able to gauge the workloads of other ports of call because of the parts orders we receive. While we are able to profit from the sale of equipment, the boating industry and community suffer as a whole.

Competitive Disadvantage – Domestic

Like most firms in the marine service industry, our company is a small business. If we want to remain competitive in the recreational marine industry, which includes a large percentage of boats over 65 feet, the law requires us to purchase Longshore insurance. Currently, there are employers who choose not to obtain Longshore insurance because they simply cannot afford the premiums. However, many businesses, including ours, do purchase the coverage. Therefore we are placed at a significant disadvantage to our domestic competitors who do not comply with the law. This, coupled with the competition of foreign-based repair centers, puts small businesses like mine in a very difficult position. It is a challenge of Ward's Marine Electric to compete due to the inability to provide competitive labor rates with those who do not purchase Longshore coverage.

Conclusion

Let me conclude by saying that if the recreational marine industry was removed from Longshore and Harbors Worker's Compensation Act requirements, employers like Ward's Marine Electric would save approximately \$200,000 a year by not having to purchase the unnecessary and duplicative Longshore insurance. This money could instead be used to expand our services, increase our employees' wages, and hire more skilled workers. It would be a win-win for employers and employees alike. In order for the industry to prosper and grow, we ask for your support in expanding the exception of boats under 65 feet to encompass the entire universe of recreational

boats. The recreational marine industry needs relief from this burdensome, costly and duplicative coverage.

Thank you, Mr. Chairman and other Members of the Committee, for bringing to this public forum an issue that is critical to our industry.

Vice-Chairman BIGGERT. Thank you very much.
Mr. Nelson, please proceed for 5 minutes.

**STATEMENT OF LARRY NELSON, VICE PRESIDENT,
ADMINISTRATION, WESTPORT SHIPYARD, INC., WESTPORT, WA**

Mr. NELSON. Thank you, Madam Chairman and Ranking Member Owens, it's a pleasure to be here before the Committee today to discuss Congressman Keller's legislation, H.R. 1329. I have submitted written testimony for the record, but I would like to take a few minutes now to summarize that testimony.

My name is Larry Nelson, I am Chairman and Vice President and a principal in Westport Shipyard in Westport, Washington. I have worked for Westport most of my 25 year career in boatbuilding, and have work in every trade in the business. I started in production in 1983, when we were a small company of 38 employees. We entered the recreational marine boat industry just as the West Coast fishing industry was collapsing. Back then a 50-foot fiberglass boat was considered a larger boat. A boat over 65 feet was almost unheard of at that time.

We didn't have the technology we have now to build fiberglass that big. The few boats that they were, there were over 65 feet were actually built like ships, because that was the best technology there was back then. Today, the smallest boat we build is 98 feet.

Westport is located in an economically depressed area in Grays Harbor County, we have over 600 employees at three different locations in Washington state. We employ 700 more working indirectly through small business as subcontractors. We are also very proud of the fact that we are now—we have second-generation employees with our company, and whole families that work for Westport. And that is not uncommon in this industry as a whole.

There really were four points in my testimony. The first point, H.R. 1329, will continue to meet the intent of the 1984 amendment to the Longshore Act. No. 2, workers will be adequately protected, benefits will not suffer.

No. 3, boatbuilding, specifically large boatbuilding, is much safer than shipbuilding. And No. 4, jobs will be created, and those existing jobs will be protected.

The purpose of H.R. 1329 is to protect workers who are creating and sustaining jobs. The same rationale applies today as did in 1984, when 65 was ruled a large boat. That was where the demarcation was. Really nothing has changed, back then, except for the size of the boats and the materials that we use. We now apply small boatbuilding to large boats.

Costs versus the benefits. There has been some question whether H.R. 1329 will result in a reduction of benefits. An employee would have to earn \$80,000 a year to obtain the maximum Longshore benefit of \$1,031. In Washington, any employee earning less than \$30 an hour will receive about the same under the Longshore Act. That covers virtually every employee in our industry. There is no

difference in coverage. And in some cases, Washington State Workers' Compensation is better, actually exceeds Longshore.

Longshore coverage is two to four times more expensive than State workers' compensation, bringing manufacturers, especially small businesses, where in many instances use those savings to expand their businesses, expand their work forces, update and enhance their production processes.

There is a great difference between shipbuilding and boatbuilding. Recreational boatbuilding is more closely related to the housing industry and actually to recreational vehicle construction. With its indoor construction, under control conditions, we employ indoor trades like cabinet makers, electricians, and so on, the same as you see in the housing industry.

Work on large boats has been proven to be twice as safe as work on smaller boats under 65 feet, and three times as safe as shipbuilding in general. This is a safe industry. I build boats between 48 feet and 164 feet, and there really is no difference. In fact, the larger the boat, the safer it is to work on, because the spaces are larger.

Finally, competition in jobs. Worldwide, the U.S. market share is shrinking. In 1999, the U.S. was in first place and held 29 percent of the world's market share. Just 3 years later, in 2003, we had fallen to 15 percent of market share, basically cut in half in a market that is growing.

Thousands of jobs have already been lost, they have gone offshore due to recreational boatbuilders going out of business. I'm sure a \$10 million boat, maybe a \$10 million boat here is a \$7 million boat in China. So what's the difference? If you look an American boat and look in a boat from China, the materials are the same, the cost are the same, it's in labor costs.

We have to be able to compete in a worldwide market. To do that we had to find other ways to compete. We need to build and reinvest back into our businesses, back into technology, back into workforce training, so that we can remain competitive.

In conclusion, Longshore coverage is important to workers who work in the Longshore and stevedore industry, but it has no place in the recreational boatbuilding industry. Workers in the recreational boatbuilding industry do not face the dangers that Longshoremen and stevedores face, and the costs of Longshore insurance outweighs the benefits.

The purpose of the 1984 exemption will continue to be served under H.R. 1329. There will be no decrease in safety, competition will be enhanced, jobs protected, without a loss of benefits to employees. H.R. 1329 is good for industry, is good for our employees, and is good for this country.

Thank you, Madam Chairman, and Members of the Committee.
[The prepared statement of Mr. Nelson follows:]

Statement of Larry Nelson, Vice President, Administration, Westport Shipyard, Inc., Westport, WA

Mr. Chairman and Ranking Member Owens, it is a pleasure to appear before the Subcommittee on Workforce Protections to discuss Congressman Ric Keller's legislation, H.R. 1329, which, in my opinion, would fulfill the intentions of Congress when in 1984 it provided an exemption for coverage from Longshore and Harbor Workers'

Compensation Act Insurance (“Longshore”) for recreational vessels under 65 feet in length.

My name is Larry Nelson, I am Chairman and Vice President and a principle in Westport Shipyard in Westport Washington. Throughout my 25 year career in boat building, as with most of our executive management, I have been involved in every aspect of our business including working in each of the various trades that we employ. I started at the shipyard, in production, in 1983 when we were a small company of 38 employees building boats for the salmon industry. We entered the recreational industry in the early 1980’s just as the west coast fishing industry was collapsing. Back then a 50’ vessel was considered a large yacht and one over 65’ was almost unheard of in the Northwest. Over the years the yachts have grown until now the smallest we build is 98’.

As the yachts have grown and our employment level has increased, our working conditions and our safety record have steadily improved. Like many in our industry we are located in an economically depressed area where the local economy was once fishing and timber based. We have been instrumental in maintaining the integrity of many local economies. We currently employ over 600 employees at three different locations in Washington state, and 388 of our employees live in Westport. We just invested well over 10 million dollars in a brand new facility in Port Angeles Washington, another economically depressed area where we employ over 100 new employees and hope to grow to 200 by this time next year. We are in active partnerships with the community colleges at all of our locations to develop training programs for our growing industry.

This is an incredibly competitive business. Fortunately each of the US builders has carved out a different product niche so we are not competing with each other. Our real competition is off shore and they are becoming stronger every year. As a result, I need financial resources to reinvest in technology and production efficiencies and new products.

Today, there are more than 250,000 recreational vessels longer than 65 feet. These are built by the more than two dozen boat builders in the United States, many of which are small businesses. If any recreational boat builder plans to build a recreational vessel longer than 65 feet, that builder would have to purchase Longshore coverage for his/her workers. This requirement creates severe hardship for many recreational vessel manufacturers, many of which only produce between one and six boats each year. Longshore coverage is two, three or even four times more expensive than state workers’ compensation coverage, which we believe is the more appropriate protection for workers in the recreational marine industry.

As you know, H.R. 1329 would remove the recreational marine industry from coverage under the Longshore and Harbor Workers’ Compensation Act and place the industry and its workers under state workers’ compensation.

The Longshore and Harbor Workers’ Compensation Act was originally enacted in 1927. Its purpose was to provide coverage to non-seamen and maritime workers (i.e., longshoremen, ship builders, ship repairers and stevedores) who work on or near navigable waters facilitates water-borne commerce. Workers in these industries, then as now, faced significant dangers and Congress, exercising its jurisdiction over our nation’s navigable waters, believed that a special form of national protection was needed.

In the ensuing years, Longshore coverage was by practice mistakenly extended to the recreational industry. In 1984, Congress recognized this error by providing an exemption to Longshore protection for recreational vessels over 65 feet. Today, Congress should finish, or, if you will, update, the work that it began in 1984 by enacting H.R. 1329.

Few recreational vessels were constructed in 1984 that were longer than 65 feet in length, and thus, the 1984 amendments had the practical effect of fully implementing the intent of Congress by exempting essentially the entire recreational industry from Longshore. But, again, with the increase in the size of recreational vessels, H.R. 1329 is necessary now to fulfill fully the intent of the 1984 amendments.

There is a great difference between ship builders whose workers have traditionally been covered by Longshore, and my segment of the marine industry—recreational boat building. The Occupational Safety & Health Administration (“OSHA”) defines “ship building” as “the construction of large commercial or naval vessels that are fabricated in place, most often of steel, typically with the vessel afloat or in drydock”¹ On the other hand, recreational boat building, according to OSHA, is different:

Based on a review of OSHA’s compliance experience in boat building facilities and a comparison of these two sets of standards, it is OSHA’s opinion

¹ OSHA Direction DIR 02–01 (CPL 2), January 23, 2002.

that the general industry standards of part 1910 [that is, OSHA's standards for general manufacturing industries in workers are provided with state workers' compensation protection] more closely address the types of operations and hazards of recreational boat building than do the shipyard standards of part 1915 [which establishes OSHA's standards for employment of navigable waters and ship building, ship repairing, ship breaking, and related activities].²

It is evident to those of us in the recreational marine industry that recreational boat building does not present its workers with the dangers faced in ship building and in other industries that should be protected by Longshore. I understand that there are those who are concerned about whether there will be an adverse impact on workers if H.R. 1329 were enacted. That could very well have been a question asked in 1984 when the Subcommittee endorsed the current 65 feet exception to the requirement for Longshore protection. I am unaware, however, of any harmful impact to those workers who manufacture recreational vessels less than 65 feet and who are not covered as the result of the 1984 amendments by state workers' compensation. I will contend that the reason we have not seen an effort to roll back the 65 feet exception is because there has not been any negative impact on workers. We, in the industry, have conducted a survey among some of the major recreational boat manufacturers to determine whether in fact there were a greater number and more significant injuries experienced by workers who manufactured vessels in excess of 65 feet. Allow me to provide two significant examples.

Hatteras Yachts, is one of the major boat builders in the world. Hatteras manufactures vessels both under and over 65 feet. Hatteras reported that in 2001, workers manufacturing vessels under 65 feet suffered 10.4 injuries per 100 workers; workers working on vessels larger than 65 feet experienced 5.8 injuries per 100 workers. Total injuries were 7.7 and total serious injuries were 3.1.

Another major boat manufacturer that manufactures under and over 65 feet, Sea Ray, reported the following: for vessels that they manufactured under 65 feet in length there were 9.4 injuries per 100 workers; for workers on vessels larger than 65 feet, 5.2 injuries per 100 workers were experienced. The total number of injuries was 8.9 per 100 workers, with the total serious injuries only 1.6 per 100 workers.

By comparison, the average OSHA Recordable Incident Rates for ship building (as opposed to boat building) in the year 2000 was a total of 22 injuries per 100 workers, with 11.7 of those classified as serious.

So, as you can see, recreational boat building both under and over 65 feet is significantly safer than the more dangerous ship building industry, particularly in terms of those workers working in the recreational marine industry on boats over 65 feet. Therefore, it is clear to us that recreational marine workers building recreational vessels of all sizes should be covered by state workers' compensation rather than Longshore.

Additionally, the many small businesses that build recreational vessels would greatly benefit if H.R. 1329 were enacted and they no longer had to provide the vastly more expensive Longshore coverage for its workers. By switching to state workers' compensation coverage, which is two to four times less expensive as Longshore coverage, these small businesses would in many instances use the savings to expand their businesses, expand their workforces and update and enhance their production processes.

In conclusion, Longshore coverage is important to workers who toil in the longshore and stevedore industry, but it has no place in the recreational vessel building industry. Workers in the recreational boat building industry do not face the dangers that longshoremen and stevedores face. Rather, they face no greater risks than those faced by other land-based workers in the manufacturing industry. Further, the resources spent on Longshore coverage could be better utilized by the small businesses to strengthen their businesses and their livelihood. Thus, recreational marine workers should be covered by state workers' compensation. We ask you to expeditiously pass H.R. 1329

Thank you, Mr. Chairman and other members of the Committee for your time and attention. I would be happy to answer any questions.

Vice-Chairman BIGGERT. Thank you, very much.
Mr. McGarrah.

²Id.

**STATEMENT OF ROBERT E. MCGARRAH, JR., COORDINATOR
FOR WORKERS' COMPENSATION, AFL-CIO, WASHINGTON, DC**

Mr. MCGARRAH. Thank you very much, Madam Chairman and Members of the Committee. I appreciate the invitation to be here today. I want to make three basic points.

Vice-Chairman BIGGERT. Would you check you microphone, I don't think that it's turned on. Or, pull it closer.

Mr. MCGARRAH. All right. I wanted to make three basic points, Madam Chair.

First, this legislation would deprive thousands of working families of the protections that Congress guaranteed them when it amended the Longshore and Harbor Act in 1972 and 1984. It would do this by excluding them from coverage, and forcing them to apply for poverty level benefits under State Workers' Compensation laws.

Before 1972, the benefits of the Longshore Act were \$70 a week, and State benefits were actually higher. Some injured workers could file lawsuits against their employers, and that was a needed and necessary reform that Congress took in the Act in 1972. Including them under the Longshore Act, it created a tort reform by putting people in workers' compensation under Federal law, and it created a new benefits schedule.

The point that we have today, Madam Chair, is that we have exactly the opposite situation, and marine industry is simply seeking to push workers out of the Longshore Act and to poverty level benefits under State workers' compensation laws.

A major study that will be coming out shortly from the National Academy of Social Insurance makes it very clear that the benefits under State laws are now 30 to 50 percent below the benefits payable under the Longshore Act. For example, in California, under the Longshore Act, the maximum payment for total disability is \$1031 compared to \$728 in California, \$662 in Ohio, \$626 in Florida, and merely \$400 a week in New York.

The State workers' compensation laws, as I said, are at or near poverty in their payments. Only the District of Columbia which follows the benefits under Longshoremen Act, are benefits anywhere near above poverty. And I have a table that is attached to my statement today.

Leading authorities on workers' compensation, like Professor John Burton and Dean Emily Spieler of Northeastern University Law School, have carefully documented how State workers' compensation benefits have been slashed over the last 15 years. They were done so because large increases in insurance forced businesses to look for solutions, and they teamed up with insurers to demand cuts in benefits. This is not the solution.

Longshore rates are subjected to the same market forces as State workers' compensation rates. When the hard market began in 2001, insurers began pricing their product and increasing rates. And that is the reason why you're hearing the complaints today. In fact, in today's Wall Street Journal, on the front page of the Money and Investment section, makes it very clear from the risk management survey that's presented, the rates are now starting to decline, because we've had enormous rate increases since 2001. And workmen's compensation insurance rates and longshore rates

will be going down as well. In fact, in Florida it was recently reported that Longshore rates will be cut by 50 percent.

But we will suggest, Madam Chairman, is that we look instead to the recreational marine industry. Yes, it is true that they are large numbers of yachts, and I believe the figure was quoted as 250,000 are now well over 65 feet and more. And it is also true, that China is injuring this luxury yacht business, selling yachts at \$7 million a year, instead of the \$10 million that's charged, and much more, by my colleagues here on this panel.

I would suggest, Madam Chairman, that this is an industry that has very good profit margins, and has customers that can certainly afford to pay workers when they're injured rates that are keeping them out of poverty. This is a wage insurance program, not a poverty program. Workers' compensation needs to be providing people with living wages so that they can get healthy and get back to work.

Amending the Longshore Act by throwing workers and to poverty would be a major mistake, and a travesty. Thank you.

[The prepared statement of Mr. McGarrah follows:]

Statement of Robert E. McGarrah, Jr., Coordinator for Workers' Compensation, AFL-CIO, Washington, DC

Chairman Norwood, Ranking Member Owens and Members of the Subcommittee, I am Robert E. McGarrah, Jr., Coordinator for Workers' Compensation for the AFL-CIO and I thank you for the invitation to appear before the Committee to present the views of working families on H.R. 1329, the "Recreational Marine Employment Act of 2003."

This legislation would deprive thousands of working families of the protections Congress guaranteed them when it amended the Longshore and Harbor Workers Compensation Act in 1972 and 1984. It would do so by excluding them from coverage under the Act and forcing them to apply for poverty-level benefits under state workers' compensation laws.

Before Congress amended the Longshore Act in 1972, the benefits paid to an injured worker were \$70.00 per week. But some injured workers could also sue their employers in tort under the doctrine laid down by the Supreme Court in *Ryan Stevedoring Co. v. Pan-Atlantic Steamship Corp.*, 350 U.S. 124, 100 L. Ed. 133, 76 S. Ct. 232 (1956).

State workers' compensation benefits for the same injuries, however, were much more generous than the \$70 weekly Longshore benefits. Maximum weekly benefits for permanent total disability, for example, were higher in Alaska, Connecticut, Hawaii, Maine, Maryland, Massachusetts, Michigan, New York, New Jersey, Rhode Island, and Washington—all states with important recreational marine industries.¹

Employers complained to Congress that they faced both the threat of litigation and efforts by injured workers to win higher compensation benefits under state workers' compensation laws—exactly the opposite of today's complaints from the recreational marine industry.

Carefully balancing the interests of business and labor, Congress amended the Longshore Act in 1972 to provide an exclusive remedy, protecting employers from costly and unpredictable litigation. It also raised the \$70 per week compensation to equal two-thirds of a worker's pre-injury wages. Workers in the recreational marine industry were covered under the Act if they worked on boats and yachts over sixty-five feet, or in marina construction.

Now, the recreational marine industry asks Congress to exempt all of its workers from coverage under the Longshore Act, dumping them into state workers' compensation systems. This proposal, if enacted, would significantly reduce compensation benefits for injured workers. Indeed, in many states, this proposal would reduce benefits to below poverty levels.

¹"The inevitable result of this disparity was that, in the conflict-of-laws picture, the traffic was made up mostly of claimants trying to get out of the federal act and into a state act." Fn. 72, 9-145 Larson's Workers' Compensation Law § 145.02.

A review of benefits paid to injured workers for total disability shows that in most states, workers' compensation benefits are 30- 50% lower than the benefits payable under the Longshore Act. [Figure 5-5]. Under the Longshore Act, the maximum weekly payment for total disability is \$1031, compared to a maximum benefit of \$728 in California, \$662 in Ohio, \$626 in Florida, and \$400 in New York.

Today, sadly, state workers' compensation benefits hover at or near poverty in most states. According to a soon-to-be published study by Dr. Allan Hunt for the National Academy of Social Insurance,² [Figure 5-4] the average Temporary Total Disability benefits paid to injured workers are below poverty in fifteen states. They are only slightly above poverty in another twenty-two states. In fact, only in the District of Columbia, which follows the benefit standards of the Longshore Act, are benefits for this insurance program above 160% of the poverty threshold for a family of four.

Leading authorities on workers' compensation, including Professor John F. Burton, Jr., the former Chairman of the National Commission on State Workers' Compensation Laws, and Northeastern University Law School Dean Emily Spieler, have carefully documented the correlation between rising workers' compensation insurance rates and the decline of benefits paid to injured workers.³ Indeed, each time state workers' compensation insurance rates rise—as they almost always do when the stock and bond markets decline—insurers tell their customers that the only solution is to cut benefits.

Longshore rates are affected by the same market forces and underwriting cycle as state workers' compensation rates. When the recession began in 2001, insurers began pricing their product in what they call a "hard market." As a result, the price of workers' compensation insurance rose during a recession, when businesses were least able to afford a price increase. Now, as the economy is showing signs of a recovery, prices are beginning to fall in some markets. Longshore rates in Florida recently fell by 50%.

Insurance rates for workers' compensation are also affected by the rates of injury in an industry or occupation. The Bureau of Labor Statistics reports that the boat building and repairing industry is one of the more hazardous industries in America, with an injury rate of 11.1 per 100 full-time workers, compared to a national average of 5.3.⁴ Normally these rates are priced into the premium set by insurers for workers' compensation.

Finally, Mr. Chairman, leading members of the recreational marine industry have argued that today's recreational yachts and boats are larger than they were in 1984, when the Longshore Act was last amended. In 1984, workers on boats and yachts under 65-feet were excluded from protection. Today, it is not uncommon to find yachts exceeding 90 feet. This Tuesday, the New York Times carried a front-page story about China's newest enterprise: luxury yachts.⁵ Commenting on China's ability to produce any product at significant savings in labor costs, Dean Leigh Smith, executive manager of Australia's Gold Coast City Marina, said, "What would normally be a \$10 million boat is \$7 million."

The issue before the Committee today should not be whether Congress should enact an amendment that would consign more injured workers to poverty-level benefits, but why the marine recreation industry, producing and servicing \$10 million yachts, isn't willing to provide fair compensation to workers injured in this dangerous industry. Why isn't it doing more to reduce high injury rates? If insurance prices are too high, the first place to turn is the insurance industry itself, not injured workers.

Congress deserves credit for preserving and protecting the Longshore Harbor Workers Compensation Act. It is a model for the Nation. It provides living wage compensation to injured workers at time when poverty is all too common.

Thank you.

[Attachments to Mr. McGarrah's statement follow:]

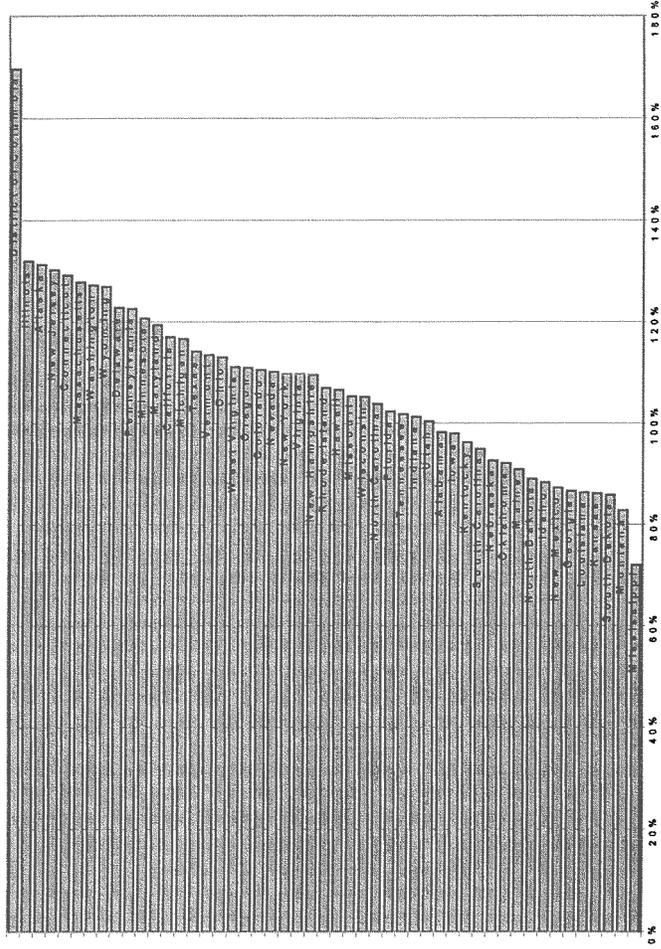
²Hunt A. "Adequacy of Earnings Replacement in Workers' Compensation Programs," unpublished study of the National Academy of Social Insurance (Washington, DC: 2004).

³Emily A. Spieler and John F. Burton, Jr., "Compensation for Disabled Workers: Workers' Compensation," in *New Approaches to Disability in the Workplace*, Industrial Relation Research Association, (Madison, WI, 1998), pp. 205-244.

⁴BLS, Number and rate of nonfatal occupational injuries and illnesses by selected industry, All United States, private industry, 2002.

⁵New York Times, July 13, 2004, p. A1.

Figure 5-4 TTD Weekly Average Relative to the Poverty Threshold, 1998



Hunt A. "Adequacy of Earnings Replacement in Workers' Compensation Programs," unpublished study of the National Academy of Social Insurance (Washington, DC: 2004).

Figure 5-5

Income Benefits for Total Disability

2004

Jurisdiction	Percent of Wages	Maximum Weekly Payment		Minimum Weekly Payment	
		Amount (\$)	Rate	Amount (\$)	Rate
Alabama	66 2/3	587.00	100% SAWW	161.00	27.5% SAWW
Alaska	80 (of spendable earnings)	832.00		183, 110	
Arizona	66 2/3	374.01			
Arkansas	66 2/3	453.00	85% SAWW	20.00	
California	66 2/3	728.00		128.00	
Colorado	66 2/3	658.84	91% SAWW		
Connecticut	75 (of after-tax income)	911.00	100% SAWW	182.20	20% of maximum
Delaware	66 2/3	506.81	66 2/3% AWW	168.94	33 1/3% of maximum
District of Columbia	66 2/3	1055.96	100% SAWW	263.99	25% SAWW
Florida	66 2/3	626.00	100% SAWW	20.00	
Georgia	66 2/3	425 for injuries after 7/1/03		42.50	
Guam	66 2/3	250.00	66 2/3% SAWW	PT-150.00	
Hawaii	66 2/3	596.00	100% SAWW	149.00	25% SAWW
Idaho	67	480.60	90% SAWW	80.10	15% SAWW
Illinois	66 2/3	1019.73	133 1/3% SAWW	342.40	PT-50% SAWW
Indiana	66 2/3	588.00		50.00	
Iowa	80 (of spendable earnings)	1133.00	200% SAWW	0.92	
Kansas	66 2/3	440.00	75% SAWW	25.00	
Kentucky	66 2/3	588.43	100% SAWW	117.69	20% SAWW
Louisiana	66 2/3	429.00	75% SAWW	114.00	20% SAWW
Maine	80 (of after-tax AWW)	506.42	90% SAWW		
Maryland	66 2/3	740.00	100% SAWW yearly maximum figure	TT-50	
Massachusetts	60	884.46	100% SAWW	176.89	20% SAWW
Michigan	80 (of spendable earnings)	671.00	90% SAWW	186.12	PT-25% SAWW
Minnesota	66 2/3	750.00		130.00	PT-65% SAWW
Mississippi	66 2/3	341.11	66 2/3% SAWW	25.00	
Missouri	66 2/3	662.55	105% SAWW	40.00	
Montana	66 2/3	487.00	100% SAWW		
Nebraska	66 2/3	562.00	100% SAWW	491.00	
Nevada	66 2/3	635.78	150% SAWW		
New Hampshire	60	1038.00	150% SAWW	207.60	30% SAWW
New Jersey	70	650.00	75% SAWW	173.00	20% SAWW
New Mexico	66 2/3	549.37	100% SAWW	36.00	
New York	66 2/3	400.00		TT-40% PT-40% OF actual weekly wage, if less than \$40.00	
North Carolina	66 2/3	688.00	110% SAWW	30.00	
North Dakota	66 2/3	555 plus dependants	110% SAWW	303.00	60% SAWW
Ohio	72 (first 12 weeks); 66 2/3 (after 12 weeks); 66 2/3 (if receiving social security benefits)	662 for first 12 weeks	100% SAWW	TT-220.67 PT-331.00	TT-33 1/3% SAWW PT-50% SAWW
Oklahoma	70	528.00	100% SAWW	301.00	50, 60, 80% of actual wages, whichever is less
Oregon	66 2/3	884.58	133% SAWW		50% SAWW, or 90% of employee's AWW, which ever is less
Pennsylvania	66 2/3	690.00	100% SAWW		
Puerto Rico	66 2/3	65.00		20.00	
Rhode Island	75 (of spendable income)	726.00	110% SAWW		
South Carolina	66 2/3	577.73	100% SAWW	75.00	
South Dakota	66 2/3	498.00	100% SAWW	249.00	50% SAWW
Tennessee	66 2/3	618.00	100% SAWW	82.70	
Texas	70	537.00	100% SAWW	81.00	15% SAWW
Utah	66 2/3	579.00	TT-100% SAWW PT-85% SAWW	45.00	
Vermont	66 2/3	887.00	150% SAWW	296.00	50% SAWW
Virgin Islands	66 2/3	400.00	66 2/3% SAWW	77.00	
Virginia	66 2/3	691.00	100% SAWW	172.25	25% SAWW
Washington	60 to 75 (depending on marital status and number of dependants)	875.54	120% SAWW	43.19 depending on marital status and number of dependants	
West Virginia	66 2/3 PT 70% TT	537.52	100% SAWW	144.20	33 1/3% SAWW (subject to federal minimum WW)
Wisconsin	66 2/3	687.00	110% SAWW	20.00	
Wyoming	TT-66 2/3 or SAMW	527.00			
Longshore Act	66 2/3	1030.78	200% NAWW	252.20	50% of NAWW

Vice-Chairman BIGGERT. Thank you, very much.
Mr. Greenway, you're recognized for 5 minutes.

**STATEMENT OF IAN R. GREENWAY, LIG MARINE MANAGERS,
INC., ST. PETERSBURG, FL**

Mr. GREENWAY. Thank you.

Thank you for the opportunity to be here today. I think everyone would agree that this is a vital part of insurance. It will fully provide benefits to every stevedore, every shipyard, and has been doing so for 80 years. But 80 years ago, it started off in a very different fashion working with stevedores and the harbor workers that were around at the time, and not in the recreational marine industry.

It has been suggested that the move of recreational boat builders, repairers and contractors to State workers' compensation will put them on some form of poverty level. And this simply isn't true. The numbers quoted have talked heavily about the maximum level benefits.

Well, unfortunately, very few people in the recreational marine field will ever hit those maximums. They're not the people buying these boats. They cannot afford to buy the boats, whether they be the employer or the employee.

They're working at levels where they will get two thirds of their weekly wage, not hit the maximums, not hit any sort of caps that are in the State benefits. Now the critical issues with Longshore insurance, which I'm involved in every day, is where a claim dollar goes. And in reality in the recreational marine industry that claim dollar goes much more to the medical community and to the legal community than it does to the injured employee.

Sorry, it's distracting to hear the buzzer all the time. I have also compared changes in Longshore rates in Florida. The change in Longshore rates in Florida that occurred on July 1 was a reduction of 42 percent or 44 percent in the effective rate only for a very narrow band of people. It had no effect on boat builders and most boat repairers. It only hit a very narrow band. It still leaves Florida among some 15 states with Longshore costs that are more than double the cost of the State act workers' compensation. And that's where this money is going. It's going to the attorneys, and it is going to the medical profession. It's not going to claimants, they're not going to suffer from this.

We also have an inequity here. Why should the person who is building the recreational boat of 60 feet be in a different shape to a person who is building a 70 foot boat?

In 1984, they put the exemption for 65 foot, when there were only a few 65 foot vessels in existence. The growth of that means the growth of this footage needs to be addressed now.

But I think there's one other point that we have to address here, and that is the huge number of employees who are out there today without any coverage. It is estimated that some one-third of marine businesses today, recreational marine businesses, today have no benefits at all, because they are not prepared to pay the exorbitant price for Longshore.

I think it is in everybody's interest to make sure that every employee has benefits available. The states have a workers' compensation system that works under 65 foot, why shouldn't it work over 65 foot? They enforce it. They broadened the coverage, so that everybody has that coverage. The Longshore Act does not provide

those teeth to ensure that everybody has coverage until after the claim.

There are thousands of employers throughout this country who provide no benefits to their employees today. They can't afford them. That means there are tens, possibly hundreds of thousands of uninsured employees out there today. I urge this Committee to move the recreational marine industry back into the State act workers' compensation, so that those people can get coverage so that every employee can be covered.

Thank you, Madam Chairman.

[The prepared statement of Mr. Greenway follows:]

Statement of Ian R. Greenway, LIG Marine Managers, Inc., St. Petersburg, FL

Good morning, Chairman Norwood and Ranking Member Owens. My name is Ian Greenway and I am pleased to be here this morning to address the need for a broader legislative exception for the recreational boating industry from the Longshore and Harbors Workers' Compensation Act ("Longshore Act").

There is a great need to continue the efforts of this committee when it last amended the Longshore Act in 1984. Enactment of a broader legislative exception for the recreational boating industry will greatly reduce an ill-placed economic burden on the many small businesses of the recreational marine industry, with virtually no significant impact on the highly skilled workforce in this sector of the maritime industry. In fact, enactment of a broader exception will result in a considerable expansion of available benefits and protection to recreational marine workers across the nation.

I am president and owner of LIG Marine Managers ("LIG") located in St. Petersburg, Florida. LIG is a leading provider of commercial marine insurance to independent insurance agencies throughout the United States since 1989. I have the privilege of interacting regularly with the marine industry and am a member of various trade associations. I have not only underwritten Longshore policies for many years, but have delivered hundreds of seminars in every corner of this country, to both the insurance community and the marine industries, as well as authoring a book dedicated to this topic. As such, I understand the industry and its employers and workers, as well as the risks these workers face in all aspects of the marine industry. Of particular relevance to today's hearing, I deal extensively with the recreational marine industry. With your permission I would like to address the impact that the enactment of a broader legislative exception would have, not only on the recreational marine industry, but also for the vital protection of its employees.

As you know, the Longshore Act was initially passed in 1927 to provide coverage to dockside workers, such as stevedores, shipyards and harbor workers. Over the years, however, the universe of maritime workers who were required to be covered by Longshore insurance grew to include virtually all waterfront employees. In 1984 Congress provided new exceptions for the coverage of Longshore insurance. Of those exceptions, exclusion F exempted "individuals employed to build, repair or dismantle any recreational vessel under 65 feet in length." There is no difference in the risks associated with repairing the plumbing, air conditioning or radio on a 75-foot recreational boat as compared to a 65-foot recreational boat. In 1984, when this exemption was enacted, recreational vessels over 65 feet were a rarity. However, today a quarter of a million of the boats registered in the United States are over 65 feet in length.

In fact, current insurance data demonstrates that claims for these larger vessels are significantly lower. Claims for workers on vessels of 65-150 feet are at least 38% lower than those on vessels under 65 feet. The reality is that the larger the boat, the more money is involved and as such, more care is given to its manufacture, maintenance and repair. Consider these vessels to be like hand crafted luxury cars, which literally have white-glove treatment. We see not only fewer injuries but also fewer serious injuries in larger recreational boats than we do in their smaller counterparts.

There are significant consequences for the marine industry—for both the employer and employee—by requiring Longshore insurance for recreational marine industries. The most significant is the vastly increased cost for employers of plumbers, electricians and other specialty contractors when they are compelled to purchase Longshore insurance rather than the alternative, state workers' compensation pro-

tection. I have submitted for the record a chart that highlights the difference in cost between Longshore insurance and state workers' compensation insurance for these types of businesses in a number of states with significant recreational marine workers. For example, in states such as Florida, Alabama, Louisiana and Tennessee, as well as 11 other states, the cost of Longshore insurance is more than double the cost of acquiring state workers compensation for workers. In another 19 states the cost is between 50% and 100% higher.

Not only does this result in a huge economic burden for the employer, but it means that an estimated one-third or more of such employers simply do not purchase any coverage, despite the legal requirement to do so, leaving injured employees without any available medical coverage, or lost wages and disability income. Transferring these businesses to the state workers' compensation system will not only make these policies more affordable, and provide a wider insurance marketplace to the employer, but also the states will have jurisdiction to enforce their own rules and ensure all businesses are carrying the coverage required by law to protect their employees.

There seems to be some concern over how Longshore premiums are allocated. Each sector of the marine industry has its own classifications, for example ship repair is 6872F, and Stevedoring has four classifications dependent on equipment used: 7317F, 7309F, 7327F and 7350F. The premiums, payrolls and claims for each of these classifications are segregated, and the rates for a particular classification are calculated purely from that classification's experience. Thus, there would be no effect on the rates and premiums of traditional marine industries by any change implemented here.

I am convinced that transferring these businesses to the state workers' compensation system and enforcing the State Workers' Compensation Acts, as only the states have the power to do, will mean that tens of thousands, and possibly hundreds of thousands of workers, will acquire coverage where there is none today. In addition, it will provide an economic boost to employers, allowing them to expand their operations and hire new employees—all while leaving the traditional Longshore employees unaffected.

In conclusion, I strongly encourage this committee to amend the Longshore Act to further expand the 1984 amendments by removing the recreational marine industry in its entirety from under LHWCA. If enacted into law, this will rationalize the state workers' compensation coverage in the recreational marine industry that Congress began in 1984.

Workers will not be harmed. Instead they will be benefited by more universal coverage.

Thank you.

[An attachment to Mr. Greenway's statement follows:]

Longshore loadings by state as at 7/1/2004

State	Longshore Loading	Actual Cost Multiplier
AL	151.0%	2.51
FL	148.0%	2.48
NH	141.0%	2.41
LA	140.0%	2.40
TN	130.0%	2.30
MS	120.0%	2.20
MT	118.0%	2.18
IA	116.0%	2.16
RI	111.0%	2.11
NC	110.0%	2.10
OK	110.0%	2.10
SC	104.0%	2.04
AR	103.0%	2.03
CA	100.0%	2.00
NE	100.0%	2.00
OR	98.0%	1.98
NM	95.0%	1.95
NY	91.3%	1.91
VA	88.0%	1.88
KS	87.0%	1.87
UT	85.0%	1.85
GA	83.0%	1.83
CO	81.0%	1.81
IN	80.0%	1.80
PA	79.3%	1.79
MI	78.0%	1.78
MO	73.0%	1.73
TX	61.0%	1.61
NV	60.0%	1.60
SD	53.0%	1.53
AZ	52.0%	1.52
MN	51.0%	1.51
WI	51.0%	1.51
NJ	50.0%	1.50
ME	47.0%	1.47
KY	46.0%	1.46
DE	44.6%	1.45
HI	40.0%	1.40
VT	40.0%	1.40
ID	39.0%	1.39
MA	38.4%	1.38
IL	34.0%	1.34
AK	25.0%	1.25
MD	20.0%	1.20
CT	13.0%	1.13

A 151% loading for example means that an employer must pay 2.51 times the state act rate for Longshore coverage

Vice-Chairman BIGGERT. Thank you, very much. I will now move to the question-and-answer period, and I yield myself 5 minutes.

Mr. Greenway, you noted that there is no difference in the risks associated with preparing the plumbing, air-conditioning, or radio on a 75 foot recreational vessel as compared to a 65 foot vessel. Can you compare the number and degree of seriousness for injuries that you see occurring in vessels over 65 feet with those that are less than 65 feet?

Mr. GREENWAY. The rating organization that monitors all these statistics, keeps statistics for vessels under 65 feet, and vessels between 65 foot and 150 feet. The claims on those are shown to be at least 38 percent lower than vessels over 65 foot, 65 foot to 150 foot range.

As Mr. Nelson has already said, it is just easier to work on a larger vessel. There's more space, there's more time, there's more money involved, quite frankly, from the owner to be that safe, and to take the more, higher degree of care that's necessary.

Vice-Chairman BIGGERT. Thank you. Looking at the law, it appears that the Longshoremen's insurance was put in to make sure that there was no gap in coverage, that everyone that would be working on some type of vessel would be provided with insurance.

This won't happen, of course, but let's say we repealed the Longshoremen's Act, and so that there was no insurance, looking then at the vessels that are 65 feet and over, would there be any gap in coverage? Ms. Hebert?

Ms. HEBERT. Well, I mean, I can't speak for the insurance industry. As far as my workers, maybe the question is, how I do with it? Some days, I'm just wondering if there is anyone who would not receive this State workers' compensation. You know, I don't have the—maybe I can yield that to Ian, as far as, you know, the State compensation.

As far as in Florida, the goal would be to have everyone covered under State compensation. I think that we are equal to our land-based partners. The work that we provide, for example, I am sure Mr. McGarrah formerly with NCCI, which is the National Council on Compensation Insurance, for a company like mine, Marine Electric, there is no classification for Marine Electric. We are electricians, and so we are classified the exact same. For my company, no, they would all would be covered, and in fact, the classification wouldn't change, they would just fall right to the same classification, my insurance numbers would not even change, other than this multiplier that he mentioned, has dropped. All of our workers would be the same and NCCI consider us in our risks equal to our land-based partners.

Vice-Chairman BIGGERT. OK.

Mr. NELSON. May I also address the question?

Vice-Chairman BIGGERT. Sure.

Mr. NELSON. Yes, but we did our research, and looked into this, one of the things that we discovered is that there are a few states that don't necessarily require workers' compensation.

And I think that one of the things that we would favor, is that the bill were structured in a way, and maybe it could be done during markup, is that an employer would have to provide Longshore insurance if there was no State compensation available, to keep people from falling through the cracks.

Vice-Chairman BIGGERT. I mean that was the intent of the law.

Mr. NELSON. That was the intent of the law.

Vice-Chairman BIGGERT. Right.

Mr. NELSON. And that's our intent too.

Vice-Chairman BIGGERT. Mr. McGarrah.

Mr. MCGARRAH. Yes, Madam Chair.

The State of New Jersey specifically excludes workers in the marine industry, so they would have no coverage, unless the State amended state law. Historically, the United States has always provided for Federal coverage for workers operating airports and harbors. That goes way back to the early days of the republic. And for Congress to throw workers back into the State system, especially

when the states are not providing any coverage whatsoever, would be an historic reversal of Federal maritime policy and would, frankly, as I had indicated, contrary to what Mr. Greenway stated, would throw workers into poverty.

The average temporary total disability payments, I'm talking about average payments, this was a study by the National Academy of Social Insurance, would put many workers below poverty, in State workers' compensation systems and only marginally above poverty. That's the major concern here.

And that's one of the major reasons in this very wealthy industry, with multimillion dollar yachts being found in ports everywhere, and we're all for multimillion dollar yachts, if we can afford them—workers simply can't live in poverty, and get better and get back to work. Thank you.

Vice-Chairman BIGGERT. Mr. Greenway.

Mr. GREENWAY. I think that, when we look at the original or the Longshore Act as it stands today, it provides a beautiful caveat to draw people back into Longshore if there is no State compensation. Section 9023 says, if individuals described in clauses (a) through (f), that's the exclusionary language, are subject to coverage under—are subject to coverage under State workers' compensation law.

It simply says there, that those exclusions disappear if there is no State act coverage in force.

Vice-Chairman BIGGERT. Thank you.

Mr. GREENWAY.—coverage in force.

Vice-Chairman BIGGERT. Thank you.

My time is expired, and that would yield 5 minutes to the gentleman from California, Mr. Miller.

Mr. MILLER. OK.

Vice-Chairman BIGGERT. You're not used to sitting in that position.

Mr. MILLER. Thank you, very much, and thank you for your testimony.

I must say, and this will come as a surprise to you, but I'm not persuaded yet, that the answer is simply to do away with the Longshore coverage.

You describe an industry you suggest is among the safest, and that would suggest to me, as very often is the case we have a rating problem here, where we have a cost problem, and the insurance industry very often is not about insurance coverage, it is about insurance investments, and the cycles that they go through.

It appears that after the pounding that they took in the beginning of this decade, in 2000, and rates escalated across the country for many lines of insurance and are now starting once again to come down. And I don't quite get that the answer is that we would uncover these workers for what I think is, in fact, in many instances and in many states, an inferior line of coverage in terms of the benefits to those workers.

And I spent a lot of time in boat yards and in shipyards, and I guess, you're saying that the statistics show that somehow this is much safer. If it is so safe, I am not quite sure why the rates are so high. Mr. Greenway has a theory on that. And yet at the same time, when I walk around many of these large yachts, and we cer-

tainly don't do the largest in my area, the very, very large yachts, very expensive yachts, I don't know, the distance to the ground is a lot further off the bow of these yachts when they put up on the waves, than it is from, you know, a small recreational boat or what we used to think was even a larger recreational boat. It's a different experience in terms of that.

And I just don't quite get that the answer here is to retract this coverage from those individuals. And I appreciate this Committee struggles all the time with both work and manufacturing and jobs that are going overseas. But it is hard for me to believe that differential is in the Longshore wage here.

I realize that you have to add up all of your total costs. But if the differential is \$5 million a yacht, I don't think that's about Longshore, and the suggestion is a cost of labor. Well, if you look at the cost of labor, if you offer those prices, you wouldn't get anybody to work in your yards, forget whether they are covered are not. I mean, they are not going to work for \$160 month. They are not going to work for \$400 a month, you know, to get to the skill that you, I assume, you need to keep your customers, and to add new ones.

I'm just struck that this is the focal point for a series of problems, whether it is insurance rating, or whether it is competition, that suggest that somehow this is the answer. I would be happy to have you respond.

Mr. NELSON. I would love to. Thank you. I think that you hit it right on the head. We can't get a worker to work for a \$160 a month. And we can't get our customers to spend—

Mr. MILLER. I understand that. Most people in the United States aren't going to live like people live in China working in those industries.

Mr. NELSON. And we wouldn't want to.

Mr. MILLER. That's my point.

Mr. NELSON. We're trying to maintain and grow our business, pay family wage jobs, the overseas competition isn't doing that. Our customers are not going to pay an additional \$3 million to \$4 million for a boat, so that they can buy from us.

Mr. MILLER. Well, for now, there was a story on Tuesday where they said nah, that's an interesting boat, but the quality is not that much different to look at.

Mr. NELSON. And look where—

Mr. MILLER. I understand, and I believe that is only a matter of time, before the quality—

Mr. NELSON. Our market share has been cut in half. That work is going elsewhere. And for a number of reasons. And Longshore is not the only reason. The reason is that we pay some of the highest wages and industry, in the world. And we want to continue to do that.

Mr. MILLER. And when those people are injured, they ought to be compensated at a level that has something to do with their standard of living they had while they were working before they were injured.

Mr. WILSON. Absolutely. And workers—

Mr. MILLER. And that's not what workers' compensation does, in many, many, many, states. It just doesn't do that.

Ms. HEBERT. If I could comment on that. As I mentioned, one of my other capacities is that I am Vice President, actually Chairman Biggert mentioned that, I am Vice President of the Marine Industries Association of South Florida. I have been Chair of the Longshore Taskforce. We didn't even call it a committee for years.

And one thing that we did, and we went out, as you know South Florida is the yachting capital the world. You know, obviously that's what people imagine, people imagine lots of wealthy people sitting around. But the reality is that our industry generates more dollars in the state than the citrus, and that we create more jobs, and generate more money.

This is about the small working families. We did a work-study in South Florida, clearly one of the biggest places you would want to go in the country to have work done on your boat. We did a work survey—let's go to all the yards, let's go to all the marinas, my company was included, what are the wages, what are the wages and salaries of people.

We went from the deck hand to the boat washer, to the service manager, on, on, and on. And what we found, and we have this, what we found is that all positions fell well within the salary caps of the state compensation system. We do not have people making the salaries of the Longshore and stevedores. And our employees are not working at the ports. We are working inland. My company doesn't even work on the water, I mean, we drive in vans, you know, to wherever it is. You know, our facilities are not located at the port, they're down the river. And the experiences and environments that are there are not the hazardous, things you are imagining at the port.

So I would beg to differ. In Fort Lauderdale, which is not one of the cheapest places to live in this country. If our salaries can fall well within state compensation, which I'm sure the industry—insurance industry would love to comment on the Florida State workers' compensation policies, are not exactly the most generous, they do fall well within, and they're not going to be a poverty level.

Mr. MCGARRAH. Well, Mr. Miller, if I could just add two points. One is, the injury rates in this industry are double the average injury rates, according to the Bureau of Labor Statistics. The average national injury is about 5.3 per 100 full-time workers. This boat building industry is 11.1 per 100 full-time workers. This is a booming industry, and a Nexis search of just the companies represented here on this panel, with my colleagues here, shows they're all going very well, thank you and have expansion plans and doing well selling yachts, and as I say are, upwards \$10 million—some of them even more into the \$30 million range. That's why we find it quite preposterous that there would be a suggestion that Federal Longshore rates, which are paying living wage while people are recovering from injuries, ought to be eliminated, and put workers into rates in a states that a well below poverty.

But what we think here, frankly, is in overreaching on the part of this very competent industry. And perhaps, some misinformation from the insurance companies that are servicing them. Because the insurance industry, as we all know, and as the Wall Street Journal documents in a front-page story today in the Money and Investing section, the industry made many major pricing decisions that came

home to haunt it when the market collapsed. And that is why rates had to go up across the board for property, casualty insurance. Workers' compensation is no exception.

A closer examination of rates, as they do in the Commonwealth of Virginia, which show that the industry frequently, as frankly many other financial services industries have, have priced their products in ways that are less than truthful, and less than candid. And the Commonwealth of Virginia catches errors all the time in the pricing practices. I would urge my colleagues to join with us, in labor, and properly examining and calling for transparency among insurers in the property-casualty insurance industry. It's a critically important part of our economy. It's necessary for all of us to do business. But we have got to have truth in the pricing of the insurance product. We don't have that now.

Vice-Chairman BIGGERT. The gentleman's time has expired. The gentleman from Florida, Mr. Keller, is recognized for 5 minutes.

Mr. KELLER. Thank you, Madam Chairman.

I want to briefly address a couple of things. The Ranking Member, Honorable George Miller, said that he is not yet persuaded. Well, perhaps it is because of my youth and experience, but I am not giving up on him on this issue. I am respectful of the fact that he was actually here in 1984 when these amendments were adopted. Therefore, I haven't pretended to tell him what his intent was. I have been respectful of the that fact that you, and you alone, know what you intended.

I21But I looked it up, and you were the Subcommittee Chair, and it passed by a voice vote. And because you put that 65 foot rule in, you made a very positive difference for the recreational marine industry that would not have happened.

I wanted to get the support of folks like you, Martin Frost and Rob Andrews and Jim Davis, and so there is, specifically, there is no union bashing in this bill. There's nothing to do with collective bargaining, there is no tort reform stuff. I wanted to have a common sense bill that would be noncontroversial.

So in the interests of optimism, let me directly address something that I hope would persuade you and some others. In California, if you were injured and you were a Longshoreman, and by the way let me point out, this bill does nothing to impact the coverage for Longshoreman. They have the Longshore insurance before, and they have the Longshore insurance after.

But if you, let's say are a recreational person, and you are working on a boat and you were injured, under Longshore insurance you get 66 and two-thirds percent. Under California State workers' compensation, you get 66 and two-thirds percent.

I would suspect the AFL-CIO witness would point out then do you, yes, but under the total maximum amount, under Longshore, you get \$1030, and under California \$728. And so, let me just address that directly, show you why it doesn't really have the hurt that you think it does.

If you look at a particularly high paid worker on a recreational boat, a diesel mechanic who makes \$20.38 an hour, and that comes out to \$815.20 a week. And in a 40 hour week, the employer will be required in California, to pay 66 and two thirds percent, just like in Florida. And that equals \$543, well within Florida's max-

imum cap, well within California's maximum cap, the same amount.

So it's really no attempt to push workers out of coverage or to give them inferior coverage, not at all. Now, one of the things that came out from Mr. McGarrah's testimony was sort of like this is just something to help rich folks, you know, and they could help themselves.

So let me just, rather than leave that unanswered, let's just address directly. Ms. Kristina Hebert, are you a billionaire?

Ms. HEBERT. No.

Mr. KELLER. Do you spend your free time hanging out with Donald Trump?

Ms. HEBERT. No.

Mr. KELLER. Do you own a 250 foot yacht?

Ms. HEBERT. No.

Mr. KELLER. OK, do you have a small family business?

Ms. HEBERT. Yes.

Mr. KELLER. OK, tell me how many people your company employees?

Ms. HEBERT. Forty-two.

Mr. KELLER. Forty-two, and you say this company will save about \$200,000 a year, if we pass this legislation?

Ms. HEBERT. Yes.

Mr. KELLER. OK, just to address for cynics, are you going to take this \$250,000 a year and just upgrade, and buy a place in Palm Beach. Or are you going to use this to hire more employees?

Ms. HEBERT. No, we would actually use it hire more employees.

Mr. KELLER. Now, we haven't sworn you in, but if you were sworn in under oath, you would say the same thing, that you were going to use this to hire more employees and create more jobs?

Ms. HEBERT. Yes.

Mr. KELLER. One of the things that you said intrigued me, you were talking about how expensive it was, essentially for a skilled worker, workforce hour of \$75 an hour, and most of the money would actually go to pay for the Longshore insurance. And you said something to the effect, that because of the high cost of Longshore insurance, some of employers are just going bare. Are you suggesting that if we didn't have the Longshore requirement, for the recreational folks, that actually there would be more workers with insurance coverage?

Ms. HEBERT. That's exactly what I am suggesting in a way, you know, I'm not an insurance professional. But we, as I mentioned, are a parts distributor. And so, in addition to providing service work, we provide parts for other contractors that are out there doing work, that I know, that are underbidding us.

And they are doing this because they cannot afford Longshore coverage. When you're looking at a one or two man show, that makes \$30,000 a year, and you're asking them for \$25,000 up-front in insurance, they're going to say, sorry, I can't do it, and they're going to work illegally.

But I would guarantee that they all would want to provide coverage for their workers. That's what they want to do with it.

Mr. KELLER. OK, one final one. I want to question, Mr. Greenway real quick.

Mr. McGarrah keeps talking about the injury rates for workers, but I think he's blurred the recreational workers with the ship workers. For example, he highlights the testimony of the Bureau of Labor Statistics that the boat building and repair industry has one of the most hazardous site injury rates of 11.1 per 100 full-time workers. He doesn't state that these rates are priced into the premiums set by issuers for workers' compensation.

Are you familiar with this statistic, and is this statistic for the entire boating industry, or does there need to be a distinction between the commercial ships and the recreational boating?

Mr. GREENWAY. I have not seen that number before, but there clearly is a big difference between the shipbuilding industry and the boatbuilding industry. And even within the boatbuilding industry, between the under 65 and the over 65.

Shipbuilding and stevedores, are considered to be twice to three times the numbers of claims the boat builder has. And even within the boatbuilding category, you have a 38 percent statistic from NCCI, which shows that it is 38 percent lower for over 65 foot because of the space available.

I would also like to add though that the coverage issue, I think, is very important. Most states, Florida, California, right now, are doing huge clampdowns on businesses in the states that are not providing workers' compensation insurance because the way Longshore is written, the states have no power to go in and enforce Longshore insurance.

So these employers that are going around without anything, they are claiming that I can take a choice, I can only take the risk of going bankrupt when the claims happen, or I can take the risk for a certainty for going bankrupt now. That means that nobody has a job. Nobody's got benefits. They get left out there in the cold.

Mr. KELLER. Thank you, Madam Chairman. My time has expired.

Vice-Chairman BIGGERT. Thank you, Mr. Keller. The gentleman from New Jersey, Mr. Payne, is recognized.

Mr. PAYNE. Yes. Thank you, very much.

This is certainly a very important issue. I think some of the issues go beyond your industry, and I don't know how we in the U.S. are going to contend with the fact that China produces things more cheaply. I guess, the answer is either reduce wages, which of course is happening anyway, actually, which is a bad trend, or, that we, I guess, move out of that industry, which is not good for the American worker. However, we've seen a number of industries totally decimated by the fact that corporations seem not to—you're not a corporation, but multinational corporations seem not to have any borders, that's for sure. And the capital just flows with the push of a computer button.

And so I think some of the problems that you're finding here, really is going to be a dilemma, that we as a nation will have to come to grips with it—I'm not running for President, so I don't have to come up with the answer. But you're talking about, of course, \$10 million for a ship here and \$7 million for one built in China. I think we have to just take a look at how we come up with technology to reduce our costs.

We have been able to—if we took that philosophy, we would make more automobiles in the United States, because automobiles are made in Brazil, they're made in China, they are made in Namibia, as a matter of fact. And so if our philosophy is simply going to be that we have to ratchet down hourly wages, or our insurance coverage, or—then we are in trouble, because you're not going to be able, you know, it first started with T-shirts and underwear, you know, that was all right, and that was sort of sweatshop stuff here anyway. And so we don't make it any more, Fruit of the Loom's here.

But then it comes into other industries, and so I really don't, you know, have an answer for this problem, this dilemma. I think that what we're going to have to do is to make a better product, somehow use the creativity of the American worker, who I believe is the best worker in the world. And somehow, perhaps, have corporations have some, some loyalty to the U.S.

I know that it might sound high-falutin', but you see there was not too much concern about the loss of manufacturing jobs, like it was—the apparel business, the clothing lines, that sort of thing.

Of course, then it started to move to automobiles, and we kind of fought back. As a matter of fact, there was a lackadaisical attitude on the part of the workers in the corporations in the U.S. until the foreign cars went longer and lasted longer, got better efficiency, and so the companies decided, well, we got to compete. And so, the American car now is almost, nearly as efficient and fuel as Japanese cars. It's just that the corporations were lazy. We just had it made. We didn't have to come up, the profits were great, so let's just sit down and make the profits.

Now, we've got to put money into research and development. I think that we can do that in all industries. The fact now, though, that others are getting concerned, we didn't bother higher income people because like we said they didn't work in making T-shirts and those kinds of apparel and dungarees.

But now I do hear my colleagues and friends who are the architects, who are little concerned now because what they're doing and some major cities is that they're sending to India or China perhaps even, or other places some kind of a description of a building that they would like to be built, and you know, these architects in India are sending back the building design. And so now it's actually starting to impact on the upper income, the professionals. Now we're starting to hear the concern.

We hear that physicians are plugged into medical devices in India somewhere, or in the Bahamas, and as that person goes through the CT scan, someone over there that is making half the price, is coming up with the, who has the same kind of education, and knows what the CT-scan says, is coming back with the diagnosis for the illness.

So this is going to be something that is not about sweatshirts anymore, it's about all kinds of industries. The old philosophy was that as the Third World kind of starts to manufacture low-priced things that we'll be able to sell them more high-tech. Well, the problem is now that the high-tech stuff is being over there too.

So we've got some very substantial problems. I don't have any questions. But I would hope that we're not trying to ratchet our-

selves down to compete on that level, but make a better mousetrap as they say, and people will make a beaten path to your doorway.

Vice-Chairman BIGGERT. And with that, the gentleman's time has expired. The gentleman from Minnesota, Mr. Kline.

Mr. KLINE. Thank you, Madam Chair.

Thank you all, witnesses, for being here today, your excellent testimony, your patience in answering our questions, just a couple of comments.

I certainly want to thank my colleague to my immediate right here for authoring this bill. I think it's the right thing to do. It seems to me, incredibly arbitrary that we have picked a foot length of 65 feet. It could have been 60, or 20, or 80, or 90. What we have here is the difference between making recreational boats and building ships. And that seems to be perfectly clear to me.

I'm very much in support of the bill, and I think it's the right thing to do. I especially want to thank Ms. Hebert and Mr. Nelson. You're doing exactly what we love to see in this country. You're creating jobs, good jobs, high-paying jobs. You're expanding opportunities for Americans, and they're taking advantage of it. I am pleased with you, and I'm pleased with the industry. This is an American industry that is doing very well, and we don't want to penalize that industry, and see those jobs move elsewhere. We want good jobs for Americans with good pay, and you're just doing one heck of a job.

So thank you very much. Thank all of you for being here to testify today. And with that, I yield back, Madam Chair.

Vice-Chairman BIGGERT. The gentleman yields back. I wish to thank the witnesses for their valuable time and excellent testimony and the Members for their participation.

If there is no further business, the Subcommittee stands adjourned. Thank you.

[Whereupon, at 11:18 a.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

Statement of Hon. Dennis J. Kucinich, a Representative in Congress from the State of Ohio

The Recreational Marine Employment Act of 2003 will have a negative impact on many workers in the state of Ohio. Removing recreational workers from the protection provided by the Longshoremen and Harbor Workers' Compensation Act (LHWCA) would leave them at a disadvantage. A worker in Ohio, for example, would receive \$315.00 less for a temporary disability under the maximum weekly payment allowed in the state compensation program. Similar disparities between LHWCA and state compensation benefits exist for both permanent disabilities and death benefits as well.

Ohio is not alone in this inequality. Many other states also have state compensation laws that would provide fewer benefits for workers than the LHWCA would. In fact, the temporary disability benefits in fifteen states are below the poverty threshold. It is completely unacceptable for a family to be forced into poverty due to a temporary injury.

Proponents of this legislation argue that it will be a catalyst for developing more jobs and helping small businesses. We cannot develop businesses interest on the backs of workers. It is our duty to protect workers and ensure that if an on the job injury occurs, they will receive the necessary compensation. The Recreational Marine Employment Act of 2003 places an unnecessary burden on workers.