BRB Nos. 91-861
and 91-861A

JOSEPH D. WEBER, III	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
S.C. LOVELAND COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
AETNA CASUALTY AND SURETY COMPANY	)	
	)	
Employer/Carrier-Respondents Cross-Respondents	)	
	)	
CHUBB INSURANCE COMPANY	)	
	)	
Insurer Cross-Petitioner	)	DECISION AND ORDER

Appeals of the Decision and Order of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

James G. Barnes (Deasey, Mahoney, Bender & McKenna, Ltd.), Philadelphia, Pennsylvania, for claimant.

Michael Huber (Freeman, Barton & Huber, P.A.), Haddonfield, New Jersey, for employer/carrier.

Louis J. De Lucca, Jr., Philadelphia, Pennsylvania, for insurer.

Before: DOLDER, Acting Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and SHEA, Administrative Law Judge.*

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(1988).

PER CURIAM:

Claimant appeals, and Chubb Insurance Company cross-appeals, the Decision and Order (90-LHC-1275) of Administrative Law Judge Paul H. Teitler rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq*. (the Longshore Act). We must affirm the findings of fact and conclusions of law of the administrative law judge if they are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

On May 3, 1986, while working for employer as a field superintendent, claimant injured his back in the port of Kingston, Jamaica, when he was walking on the catwalk on employer's barge and he slipped and fell. Claimant was hospitalized in Jamaica, then flown back to the United States. The parties agree that claimant is permanently totally disabled as a result of the May 1986 injury. At the time of the hearing, Chubb Insurance Company (Chubb) had paid claimant medical benefits in the amount of $185,335.13 and workers' compensation payments in the amount of $75,780.60, and indicated it is continuing to pay benefits under Pennsylvania law pursuant to the International Foreign Voluntary Workers' Compensation policy purchased by employer. Aetna Casualty and Surety Company (Aetna) covers employer for its liability under the Longshore Act. Employer has paid claimant his salary since the injury, and claimant signs his compensation checks over to employer.

Claimant's usual job included making repairs, cleaning and painting employer's vessel, loading and unloading cargo, and transferring people to different jobs. Claimant testified that 90 to 95 percent of his work occurred within the United States, and the other 5 to 10 percent occurred in various countries including Canada, Mexico, Columbia, Costa Rica, Venezuela, Cuba, and Jamaica. On the day of his injury, claimant was sent to Jamaica to discharge the vessel's grain cargo, which had been loaded in New Orleans, Louisiana. In his decision, the administrative law judge found, and the parties do not dispute, that claimant meets the status requirement of Section 2(3) of the Act, 33 U.S.C. §902(3).

Claimant brought an action in the United States District Court for the Eastern District of Pennsylvania under the Jones Act, 46 U.S.C. §688 *et seq.* In an Order dated March 18, 1989, Judge William Ditter, Jr. decided that the Jones Act did not apply and granted summary judgment in favor of employer. The judge stated that claimant is an "employee" under Section 2(3) of the Longshore Act, and not a Jones Act seaman. Cl. Ex. 1. The order was not appealed.

To be covered under the Act, a claimant must satisfy the status requirement of Section 2(3) of the Act, 33 U.S.C. §902(3) (1988), and the situs requirement of Section 3(a), 33 U.S.C. §903(a)(1988). *Northeast Marine Terminal Co., Inc. v. Caputo*, 432 U.S. 249, 6 BRBS 150 (1977). As claimant's coverage under Section 2(3) is not disputed, the sole coverage issue raised in this case is whether claimant's injury occurred on a situs covered by Section 3(a). Section 3(a) provides in pertinent part that "compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring *upon the navigable waters of the United States*...." 33 U.S.C. §903(a)(emphasis added).

In his decision, the administrative law judge found that claimant did not meet the situs requirement of the Act on the basis of his conclusion that no precedent extended the definition of "navigable waters of the United States" to the harbor of another nation. The administrative law judge considered and rejected claimant's arguments that he should be covered because the language "high seas" as used by the United States Courts of Appeals in *Cove Tankers Corp. v. United Ship Repair*, 683 F.2d 38, 14 BRBS 916 (2d Cir. 1982), and *Reynolds v. Ingalls Shipbuilding Division, Litton Systems, Inc.*, 788 F.2d 264, 19 BRBS 10 (CRT)(5th Cir. 1986), *cert. denied*, 479 U.S. 885 (1986), includes the territorial waters of another jurisdiction, and that in the 1984 Amendments to Section 3 of the Act, the House Report explained that the Act covers employees who work "over the water." Cl.'s Br. at 7; 1984 U.S.C.C.A.N. 2734, 2738-2739.

The administrative law judge distinguished the facts in *Cove Tankers* and *Reynolds*, wherein the courts extended coverage to workers injured or killed while working on ships on the high seas, from the facts herein, noting that neither of those cases involved injuries to claimants occurring in a foreign port. The administrative law judge also found that claimant had been paid substantial benefits under Pennsylvania law under a policy purchased from Chubb to cover workers injured outside of the coverage of the Act, a fact the court in *Cove Tankers* found favored not extending coverage to the high seas.

Further, citing *Kollias v. D & G Marine Maintenance*, 22 BRBS 367 (1989), *rev'd on other grounds*, 29 F.3d 67 (2d Cir. 1994), *petition for cert. filed*, 63 U.S.L.W. 3313 (U.S. Oct. 4, 1994)(No. 94-625), the administrative law judge rejected claimant's contention that employer is collaterally estopped from raising the issue of coverage because the district court found that claimant is a "maritime employee" within the meaning of the Act. The administrative law judge found that employer was not collaterally estopped from raising jurisdiction because the issue before the district court was not the same as the issues raised in the claim before him. The administrative law judge noted that in the action before the district court, the issue was whether claimant qualified as a seaman under the Jones Act, and the district court, finding that claimant did not qualify as a seaman under the Jones Act, dismissed claimant's cause of action. The administrative law judge noted that the Jones Act suit did not include litigation of the situs issue and that a finding of situs was not necessary to the district court's judgment. The administrative law judge also found that because Aetna and Chubb were not parties to the district court action, they were not precluded from raising the issue of coverage.

Thus, the administrative law judge concluded that he could not extend the Act's coverage to claimant injured, as here, in Kingston, Jamaica. Accordingly, the administrative law judge denied claimant benefits. The administrative law judge therefore found it unnecessary to address whether employer is entitled to Section 8(f), 33 U.S.C. §908(f) relief, and whether Chubb is entitled to reimbursement from Aetna for compensation it paid under the International Voluntary Workers' Compensation Policy.

In their appeals to the Board, claimant and Chubb contend that employer is collaterally

estopped from raising coverage issues and that the administrative law judge erred in finding that claimant was not injured on a covered situs. Chubb also contends that if claimant is covered under the Act, it is entitled to reimbursement from Aetna for compensation payments it made to claimant under Pennsylvania law pursuant to the policy employer purchased to cover injuries outside the United States. Employer responds, urging affirmance, but in the event the Board should reverse the administrative law judge's decision, employer contends that it is entitled to Section 8(f) relief.

On appeal, claimant and Chubb first contend that employer is collaterally estopped from raising the issue of coverage. The parties note that in his decision, the district court judge specifically found that claimant is an "employee" within the meaning of the Longshore Act. Claimant and Chubb attempt to distinguish the Board's holding in *Kollias*, 22 BRBS at 367, from the facts in this case, noting that in *Kollias* the employer was not a party to the federal court action but here employer was a party as it was a named defendant in the Jones Act suit and was an active participant. Claimant also contends, as he did below, that employer is precluded from raising jurisdiction because it did not appeal the district court's order.

The doctrine of collateral estoppel may apply to bar relitigation of issues when the issue was actually litigated in a prior proceeding and was necessary to the outcome of that proceeding. *See Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 326 n.5, 99 S.Ct. 645, 649 n. 5 (1979). In *Kollias*, 22 BRBS at 369, the Board held that the employer was not estopped from contesting coverage before the administrative law judge because situs, the issue the employer was contesting, was not litigated at the district court trial regarding the claimant's status as a seaman, and a finding of situs was not necessary to the jury verdict that the claimant was not a seaman.[1]

Although claimant and Chubb are correct that in *Kollias* the employer was not a party to the district court action whereas in this case employer was a party to the Jones Act suit, the district court did not address the issue of situs and neither Chubb nor Aetna were parties to the action. Since situs was not a necessary determination in the district court's determination that claimant was not a seaman but was a "maritime employee" under the Act, the prerequisites to the application of collateral estoppel are missing. Moreover, the argument that employer cannot raise the situs issue because it did not appeal the district court's order in the instant case is misguided; employer was the victorious party in the district court action and had no reason to appeal the directed verdict. We therefore affirm the administrative law judge's finding that employer is not collaterally estopped from raising the situs issue. *See generally Ortiz v. Todd Shipyards Corp.*, 25 BRBS 228 (1991).

Claimant and Chubb next contend that the administrative law judge erred in finding that claimant did not meet the situs requirement for coverage under the Act. Claimant and Chubb contend, citing *Cove Tankers* and *Reynolds*, that the courts have moved away from equating "navigable waters" with the three miles of water which extend from the nation's coast. Claimant also

[1]In its decision in *Kollias*, 29 F.3d at 67, the Second Circuit declined to address the issue of collateral estoppel in light of its conclusion that Longshore coverage includes the high seas. *See* discussion *infra*.

contends, as he did below, that in explaining the 1984 Amendments to Section 3 of the Act, the House Report states that the Act covers employees who work "over the water." Cl.'s Br. at 7; 1984 U.S.C.C.A.N. 2734, 2738-2739. Claimant contends that even if his accident occurred within the "territorial waters" of Jamaica, those waters are "nevertheless, according to international law, not under the exclusive jurisdiction of Jamaica," and the United States has an interest in protecting workers such as claimant who primarily work in the United States and whose employer occasionally sends him abroad. Claimant also contends that Jamaica's sovereign interests would not be violated if coverage under the Act is extended to him. Cl.'s Br. at 7-9.

Resolution of the issue presented in this case requires that we trace the development of the law on the subject of the Act's coverage for injuries occurring on the high seas. In *Cove Tankers Corp. v. United Ship Repair*, 683 F.2d 38, 14 BRBS 916 (2d Cir. 1982), the United States Court of Appeals for the Second Circuit extended coverage to one worker injured, and another killed, while working on employer's ship on the high seas, noting that the injuries occurred on board a United States flag vessel moving from one United States port to another with no deviation, scheduled or otherwise, into the territorial waters of any foreign nation. *Id.*, 683 F.2d at 41, 14 BRBS at 921. The court held that the Act should apply in some cases to waters farther than three miles offshore in order to prevent employers from avoiding liability merely by deviating into non-covered territory. *Id.*, 683 F.2d at 42, 14 BRBS at 922-923. The court found it significant that the claimants would not be covered by a state workers' compensation scheme, that there was no planned deviation of the ship into a foreign port, and that the trip was not planned for the high seas. *Id.*

In *Reynolds v. Ingalls Shipbuilding Division, Litton Systems, Inc.*, 788 F.2d 264, 19 BRBS 10 (CRT)(5th Cir. 1986), *cert. denied*, 479 U.S. 885 (1986), the United States Court of Appeals for the Fifth Circuit extended coverage to a claimant injured during a ship's sea trials on the high seas. The court stated that employers should not be able to avoid liability by shifting into non-covered territory, and held that navigable waters may include the high seas as the term embodies the same distinction under the Longshore Act as it does under admiralty, *i.e.*, the distinction between state waters and waters of the United States, and not between territorial waters and the high seas. *Id.*, 788 F.2d at 269-270, 19 BRBS at 13-15 (CRT). The court stated that had Congress wished to limit the Act's coverage, it could have used the term "territorial waters" instead of "navigable waters." *Id.* 788 at 270, 19 BRBS at 15 (CRT).

The Board has interpreted *Cove Tankers* and *Reynolds* on a case by case basis based on the facts of the particular case before it. In *Larsen v. Golten Marine Co.*, 19 BRBS 54 (1986), the Board held that the claimant, injured 14 miles offshore en route from Newark, New Jersey to Baltimore, Maryland, with no planned deviation into foreign waters, was injured on a covered situs. The Board found the facts similar to those in *Cove Tankers* and *Reynolds.* In *Kollias*, 22 BRBS at 367, however, the Board held that the situs requirement was not met. In that case, claimant, a repairman, was injured on board the *T.T. Williamsburgh*, which had embarked from Galveston, Texas, on a sixty-three day voyage around Cape Horn to Long Beach, California. At the time of claimant's injury, the ship was in the Yucatan Channel, located between Cuba and the Yucatan Peninsula of Mexico. The Board noted that the administrative law judge found that claimant was injured on the

high seas about 1500 miles from the American mainland, that the trip was planned for the high seas, that the ship entered foreign territorial waters within a week of claimant's injury to unload spot cargo in Curacao, and that the parties agreed that claimant would be entitled to workers' compensation under New York law should coverage under the Act be denied. The Board distinguished the facts from those in *Cove Tankers*, noting that in *Cove Tankers*, the court stated that claimant was injured on the high seas while traveling between United States ports with no deviation into the foreign territorial waters of another nation, and the court relied on the fact that claimant did not have recourse to any alternative workers' compensation absent coverage under the Act. The Board therefore held that the situs test was not met. *Kollias*, 22 BRBS at 371.

In *Gouvatsos v. B & A Marine Co.*, 26 BRBS 38 (1992), *aff'd sub nom. Kollias v. D & G Marine Maintenance,* 29 F.3d 67 (2d Cir. 1994), *petition for cert. filed,* 63 U.S.L.W. 3313 (U.S. Oct. 4, 1994)(No. 94-625), the Board affirmed the administrative law judge's finding that the situs test was met where claimant, a repairman, was injured aboard ship 200 miles offshore in the Gulf of Mexico while traveling from Mexico to Galveston, Texas, on the return portion of a round trip. In extending coverage, the Board noted that although there was a scheduled deviation to a foreign port, claimant boarded the ship in Texas and was returning there when the injury occurred. Moreover, it was unclear under what circumstances the claimant had received benefits pursuant to New York's workers' compensation law. The Board concluded that while the facts were somewhat different from *Cove Tankers*, it could not say the administrative law judge's decision to find coverage was irrational or not in accordance with law, and that the claimant was clearly covered under the Act pursuant to the *Reynolds* decision.

In the time since the administrative law judge issued his decision in the instant case, the Board's decisions in *Kollias* and *Gouvatsos* were appealed to the United States Court of Appeals for the Second Circuit and consolidated for decision. *Kollias v. D & G Marine Maintenance*, 29 F.3d 67 (2d Cir. 1994), *petition for cert. filed*, 63 U.S.L.W. 3313 (U.S. Oct. 4, 1994)(No. 94-625). In its decision, the court reversed the Board's denial of benefits in *Kollias* and affirmed the Board's award of benefits in *Gouvatsos*, holding that the term "navigable waters" includes the high seas without qualification. *Kollias*, 29 F.3d at 75.

In their appeals in the *Kollias* case, the claimants and the Director, Office of Workers' Compensation Programs, contended that claimants' entitlement to benefits under the Longshore Act was based on the premise that the Longshore Act may be applied extraterritorially, that is, beyond the territorial jurisdiction of the United States. The United States Court of Appeals for the Second Circuit first stated that a "presumption against extraterritoriality" exists as Congress intended its enactments to apply only within the territorial jurisdiction of the United States, unless the legislation reflects a contrary intent.[2] *Kollias*, 29 F.3d at 70; *see Smith v. United States*, U.S. , 113 S.Ct.

[2]The court initially noted that Kollias is a New York resident, employer is based in New York, and the ship claimant was injured on is an American flag ship. The court noted that the ship Gouvatsos was on when injured was of Bermudian registry, employer was New York based, and claimant is American.

1178, 1181 (1993); *EEOC v. Arabian Amer. Oil Co.*, 499 U.S. 244, 248 (1991). The *Kollias* court found, however, that the presumption of extraterritoriality is overcome under the Longshore Act. The court held that the Longshore Act contains a clear indication of congressional intent to apply the statute extraterritorially as reflected in the language of Section 39(b) of the Act which provides in part:

> Judicial proceedings under sections 918 and 921 of this title in respect of *any injury or death occurring on the high seas* shall be instituted in the district court within whose territorial jurisdiction is located the office of the deputy commissioner having jurisdiction in respect of such injury or death....

33 U.S.C. §939(b) (emphasis added). The court found that the statute's specific reference to venue for a civil action relating to an injury sustained on the high seas indicates that Congress intended the Act to cover injuries sustained on the high seas. Further, the court found that Congress' overriding purpose in enacting the Act was to provide consistent workers' compensation coverage to eligible longshore and harbor workers, and that that goal would be frustrated by limiting the Longshore Act to territorial applications. *Kollias*, 29 F.3d at 74.

The court stated that Congress' specific aim when it enacted the original version of the Longshore Act in 1927 was "to fill the void created by the inability of the States to remedy injuries on navigable waters." *Id., citing Northeast Marine Terminal Co. v. Caputo*, 442 U.S. 249, 258, 6 BRBS 150, 155 (1977). The court found that a central purpose underlying the Longshore Act was to create "a *uniform* compensation system" in which a worker's coverage did not depend on the precise site of his injury. *Id., citing Director, OWCP v. Perini North River Associates*, 459 U.S. 297, 316-317 n.26, 15 BRBS 62, 75 n. 26 (CRT)(1983). The court concluded that inasmuch as the employers raised no choice of law issues, the law to be applied in the cases was the law of the United States.

The *Kollias* court found that in view of its holding--extending Longshore coverage to the high seas--it was not necessary to address the Board's findings with respect to Kollias' receipt of and eligibility for state workers' compensation benefits. The court found the claimant's eligibility for state workers' compensation benefits was irrelevant to the issue of whether Kollias is entitled to benefits under the Longshore Act. The court noted that federal and state coverage for injured maritime workers may overlap, and that federal coverage is not exclusive in overlapping areas. *See, e.g., Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715, 12 BRBS 890 (1980). *Kollias*, 29 F.3d at 75. Thus, by its decision in *Kollias*, the Second Circuit eliminated the exceptions to extending coverage to the high seas which it created in *Cove Tankers*.

While the court's decision in *Kollias* indicates an expansion of jurisdiction under the Longshore Act, it does not specifically address whether the Longshore Act extends to a worker, such as claimant in the case before us, injured in foreign territorial waters or in a foreign port. This issue

has not been addressed in any case arising under the Longshore Act.[3] Therefore, we must look to see how the issue of injuries occurring in foreign territorial waters is treated under other federal admiralty statutes.

[3]Although employer cites cases allegedly establishing that claimants in foreign ports are not entitled to coverage, *e.g.*, *Christianson v. Western Pacific Packing Co.*, 24 F. Supp. 437 (W.D. Wash. 1938)(the court held that the Act did not apply to an employee injured while servicing canning machinery on a barge located in British Columbia waters in Canada), and *Panama Agencies Co. v. Franco*, 111 F.2d 263 (5th Cir. 1940)(the court stated that the Act did not apply to a longshore employee injured while loading a steamship in the Panama Canal Zone), the courts summarily found no coverage, stating that the injuries to the employees did not occur in "the navigable waters of the United States." Thus, the courts provided no reasoning for their ruling, and in light of recent law, as discussed *infra*, we do not find them definitive of the issue before us.

The other cases cited by employer also are inapposite. In *Maharamas v. American Export Isbrandtsen Lines, Inc.*, 475 F.2d 165 (2d Cir. 1973), while the court denied coverage to a claimant who was injured while working as a hairdresser on a Mediterranean cruise, the claimant was not doing longshore work, and in *Garcia v. Friesecke*, 597 F.2d 284 (1st Cir. 1979), *cert. denied*, 444 U.S. 940 (1979), denial of coverage related to the injury occurring in Puerto Rican territorial waters which gave rise to a conflict of law issue and dealt with the special circumstances of Puerto Rico's status as a territory of the United States. *See also Tyndzik v. University of Guam*, 27 BRBS 57 (1993)(Smith, J., dissenting on other grounds) (injury occurring in waters off the territory of Guam occurred on the "navigable waters of the United States").

Federal courts have extended coverage to individuals injured in foreign territorial waters under the Jones Act,[4] 46 U.S.C. §688 *et seq.*, and the Death on the High Seas Act,[5] 46 U.S.C. §762 *et seq.* While cases decided under those Acts are not binding upon us, they are instructive, and they indicate a trend in admiralty law toward extending coverage to those who are injured or die in foreign territorial waters. The rationale for the courts' extension of coverage under the Jones Act and the Death on the High Seas Act (DOHSA) is similar to the rationales provided by the Second and Fifth Circuits in *Kollias* and *Reynolds* in extending coverage under the Longshore Act to claimants injured on the high seas, namely, the enforcement of a uniform system of compensating the injured that does not depend on the place of injury. Further, the language that is the basis of DOHSA jurisdiction, *i.e.*, coverage for deaths occurring on the "high seas," is identical to the language in Section 39(b) of the Longshore Act, *i.e.*, that referring to any injury or death occurring on the "high seas," and district courts have found that the term "high seas" was not meant to exclude foreign territorial waters under DOHSA. *See Howard v. Crystal Cruises, Inc.*, 1992 AMC 1645, 1648 (1992); *Mancuso v. Kimex, Inc.*, 484 F.Supp. 453, 455 (S.D. Fla. 1980). Specifically, the United States Courts of Appeals for the Fourth and Fifth Circuits have held that the Jones Act is applicable to a seaman injured or killed in foreign territorial waters or in a foreign port. *Ivy v. Security Barge Lines, Inc.*, 606 F.2d 524, 528 (5th Cir. 1979)(*en banc*), *cert. denied*, 446 U.S. 956, *reh'g denied*, 448 U.S. 912 (1980)(although decedent drowned a few miles above Baton Rouge,

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[4]The Jones Act, 46 U.S.C. §688, provides:

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

[5]The Act provides:

> Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued.

46 U.S.C. §761.

Louisiana, on the Mississippi River, and was therefore in national waters, the court stated that the Jones Act applies in foreign territorial waters as well as in domestic territorial waters); *McClure v. United States Lines Co.*, 386 F.2d 197 (4th Cir. 1966). In *McClure*, the plaintiff brought suit for death of her husband, an American seaman, who drowned upon falling off a ship into waters in a French harbor. Plaintiff claimed the members of the crew had been negligent in performing a "duty of assistance" arising under French law. She brought her suit against the owner of the ship from which her husband had fallen. The owner and the flag of the ship were American. The court declined to address the significance of French law, noting that American maritime law applies. The court stated that this is not a claim by a French citizen, in which France might have a substantial interest, but a claim by an American widow of an American seaman against the American owner of an American flag vessel. The court stated that France has no interest in the outcome of this purely American controversy (except for its occurring in France) being litigated in the courts of the United States.

Citing *Farmer v. Standard Dredging Corp.*, 167 F. Supp. 381 (D.Del. 1958),[6] the court in

[6]In *Farmer*, the plaintiff, a United States citizen sued the defendant, a Delaware corporation, for injuries allegedly sustained in the course of his employment as a seaman aboard defendant's dredge registered under the laws of the United States while the dredge was operating in the territorial waters of Venezuela. The court noted that Venezuelan law provided that its law should be looked to exclusively to determine the rights of a seaman injured in its waters regardless of the nationality of the seaman or the flag of the vessel and, in this case, the dredge was performing local work. *Farmer*, 167 F.Supp. at 383. The court stated that since plaintiff was employed to serve on an American ship, the Jones Act would be applicable regardless of any provision of Venezuelan law if the vessel traversed the seas and called at ports of different nations during the plaintiff's employment. *Farmer*, 167 F.Supp. at 383.

Because, however, plaintiff's employment was localized in the territorial waters of Venezuela, the court found no case on point. The court stated, however, that cases which have applied the Jones Act have indicated "an almost universal solicitude for the rights of a United States seaman" with the two exceptions being cases where Jones Act recovery was denied on the basis of the "law of the flag." The court stated that more recent and more authoritative cases indicate that if any other factor can be combined with the United States citizenship or domicile of the seaman to serve as a basis for applying the law of the United States, the law of the flag will be discarded if its application would defeat an action under the Jones Act. *Farmer*, 167 F.Supp. at 383. (Cont.)

The court stated that no case has been found which holds that the Jones Act is not available to a seaman injured on a vessel of United States registry. The court further stated that as against the circumstances that the injury occurred during employment exclusively within foreign territorial waters, the United States citizenship of the parties and the United States registry of the vessel are considerations of paramount importance which require that Jones Act relief be recognized when a maritime tort has occurred. The court cites *Lauritzen v. Larsen*, 345 U.S. 571 (1953), in which the Supreme Court stated that "each nation has a legitimate interest that its nationals and permanent

McClure stated that when an American seaman on an American vessel is injured in a foreign port, the laws of this country will be applied. *McClure*, 368 F.2d at 200. The rationale for extending coverage in *Farmer* and *McClure* was to promote uniformity in application of the law, to protect the interests of American seamen, and to be practical -- the controversy had little or no significance for the foreign country and all significant contacts between the seaman, his activity and the ship were with the United States. *But see Alvarez v. Creole Petroleum Corp.*, 462 F.Supp. 782, 786-787 n.14 (D. Del. 1978)(the court stated that the opinion in *Farmer* suggests that absent United States registry and the United States citizenship of the plaintiff, Venezuelan law would have applied), *aff'd*, 613 F.2d 1240 (3d Cir. 1980); *Allan v. Brown & Root, Inc.*, 491 F.Supp. 398 (S.D. Tex. 1980).

Under DOHSA, several district courts have extended coverage to citizens of the United States who died within territorial waters of foreign nations. *See Howard*, 1992 AMC at 1645 (DOHSA applies to decedent, a passenger on a cruise ship, who died as a result of falling off a gangplank in the port of Zihuatanejo, Mexico); *Jennings v. Boeing Co.*, 660 F.Supp. 796 n.9 (E.D. Pa. 1987)(DOHSA applies to widow's wrongful death action for husband's death following helicopter crash in North Sea, although case was dismissed on other grounds); *Moyer v. Klosters Rederi*, 645 F. Supp. 620 (S.D. Fla. 1986)(DOHSA applies to passenger on cruise ship who died of a heart attack while on a snorkeling expedition in Mexican territorial waters); *Kuntz v. Windjammer "Barefoot" Cruises, Ltd.*, 573 F.Supp. 1277 (W.D. Pa. 1983)(DOHSA applies to decedent killed in scuba diving accident on seas near Bahamas), *aff'd mem.*, 738 F.2d 423 (3d Cir. 1984), *cert. denied*, 469 U.S. 858 (1984); *In re Air Crash Disaster Near Bombay India on Jan. 1., 1978*, 531 F.Supp. 1175 (W.D. Wash. 1982)(DOHSA applies to a claim made by U.S. citizens regarding crash of an Indian jetliner in Indian territorial waters); *Mancuso*, 484 F.Supp. at 453 (DOHSA applies to decedent who died in a plane crash 300 feet short of the runway in Kingston, Jamaica); *Cormier v. Williams/Sedco/Horn Constructors*, 460 F.Supp. 1010 (E.D. La. 1978)(DOHSA applies to seaman who drowned in a river in Peru); *but see Roberts v. United States*, 498 F.2d 520 (9th Cir. 1974), *cert.*

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inhabitants be not maimed or disabled from self-support." *Lauritzen*, 345 U.S. at 586. The district court stated:

> The laws of Venezuela, while presumably adequate for Venezuelan residents, cannot be held as a matter of law to satisfy the standards of American remedies in the case of maritime torts. The interest of Venezuela in the matter ended when plaintiff departed from its boundaries; but the interest of the United States is continuing. The power of Congress and the Courts to control the activities of United States citizens who are abroad when those activities have effects with the United States and are of little or no consequence outside, is settled... Under the prevailing circumstances, the Court will not apply Venezuelan law to deprive plaintiff of a remedy under the Jones Act.

167 F. Supp. at 384.

denied, 419 U.S. 1070 (1974) (court stated it is unclear if DOHSA applies to air crash victim off the coast of Okinawa, but decided case on other grounds).

In *Howard*, 1992 AMC at 1645, the district court for the eastern district of California summed up much of the case law under DOHSA on the issue, stating that federal courts have admiralty jurisdiction over all torts that occur on navigable waters and bear a "significant relationship to traditional maritime activity." *Id.* at 1646. The court found that although no federal appellate court had reached the issue, a number of district courts had considered it and nearly unanimously found that DOHSA applies to foreign territorial waters. *Id.* at 1647; *but see Sanchez v. Loffland Brothers Co.*, 626 F.2d 1228, 1230 n.4 (5th Cir. 1980), *cert. denied*, 452 U.S. 962 (1981)(while the court noted that DOHSA has been extended by some courts to deaths occurring in foreign territorial waters, the issue was not disputed in that particular case). In stating its rationale for extending coverage, the court in *Howard* stated that Congress' primary purpose in enacting DOHSA was to create a uniform federal maritime tort action for deaths occurring outside the reach of the states, and that this result would not be accomplished if deaths occurring in foreign territorial waters were compensated or not according to the tort recovery provisions of the foreign country where the death occurred. The court also stated that the purpose of DOHSA was to create a federal remedy for harms beyond the reach of state law, and not to distinguish between the high seas and foreign territorial waters. *Id.* at 1648. The court stated that Congress and the courts have striven to provide a measure of uniformity. The court concluded that DOHSA applies to foreign territorial waters consistent with the weight of authority and to assure "uniform vindication of federal policies." *Id.*

Given the extension by the Courts of Appeals for the Second and Fifth Circuits of the Longshore Act to injuries occurring on the high seas, and of the courts in extending coverage to seamen or United States citizens injured or killed in foreign territorial waters under the Jones Act and DOHSA, we hold that coverage under the Longshore Act extends to claimant in this case who was injured in the port of Kingston, Jamaica. Like the Jones Act and DOHSA, the Longshore Act derives its legitimacy from Article III of the United States Constitution, concerning federal court jurisdiction over admiralty and maritime cases. *See George v. Lucas Marine Construction*, BRBS , 93-1612 (Sept. 28, 1994), slip op. at 6. Thus, the cases arising under the Jones Act and DOHSA provide guidance in resolving the issue in this case. Moreover, such a holding serves the policy concern expressed by the various courts by providing uniform coverage and protection for American workers working in foreign waters when all contacts but the site of injury are with the United States. As stated in *Kollias*, 29 F.3d at 74, Congress' overriding purpose in enacting the Act was to provide consistent workers' compensation coverage to eligible longshore workers, a goal which would be frustrated by limiting the Act to territorial application. Where, as here, the injury occurs in the territorial waters of a foreign nation and claimant is a citizen of the United States, employer is based in the United States, the ship was under American flag, no choice of law issue was raised by the parties, and claimant meets the status requirement of the Act, we hold that the Longshore Act applies. That claimant has a remedy under Pennsylvania law is not relevant to the inquiry of whether he also is covered under the Longshore Act. *Kollias*, 29 F.3d at 75.

We therefore reverse the administrative law judge's decision, and hold that claimant's injury occurred on a site covered under the Act. In view of this holding, it is necessary to remand the case for the administrative law judge to address Chubb's contention regarding its right to reimbursement from Aetna. The Board has held that the administrative law judge has the power to hear and resolve insurance issues which are necessary to the resolution of a claim under the Act. *See Barnes v. Alabama Dry Dock & Shipbuilding Corp.*, 27 BRBS 188 (1993); *Abbott v. Universal Iron Works, Inc.*, 23 BRBS 196 n.2 (1990), *aff'd in pert. part on recon.*, 24 BRBS 169 (1991); *Rodman v. Bethlehem Steel Corp.*, 16 BRBS 123 (1984). Further, resolution of the issue involves an interpretation of the insurance contract, and therefore it is proper for the administrative law judge, as fact-finder, to make the necessary findings. *See Rodman*, 16 BRBS at 126. Moreover, in view of the parties' agreement that claimant is permanently totally disabled, the administrative law judge must consider employer's entitlement to Section 8(f) relief.

Accordingly, the administrative law judge's Decision and Order denying benefits is reversed, and the case is remanded for resolution of the remaining issues consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

ROBERT J. SHEA
Administrative Law Judge