



Covering Your Credential: An Introduction to License & Professional Liability Insurance

What is license & liability insurance and what types of coverage are available for USCG licensed mariners?

Coverage triggers: When is mariner liability insurance activated?

Insurance in action: Legal case studies





The U.S. Coast Guard As A Regulatory Authority

- Professional Licensure
 - Newly issued USCG MMC credentials: 2022: 59,638
- Negligence is failure to provide the degree of care or prudence required of a professional under their scope of license resulting in damage(s), injury(s), or death(s)
- Duty or Standard of Care
 - Where do priorities reside?

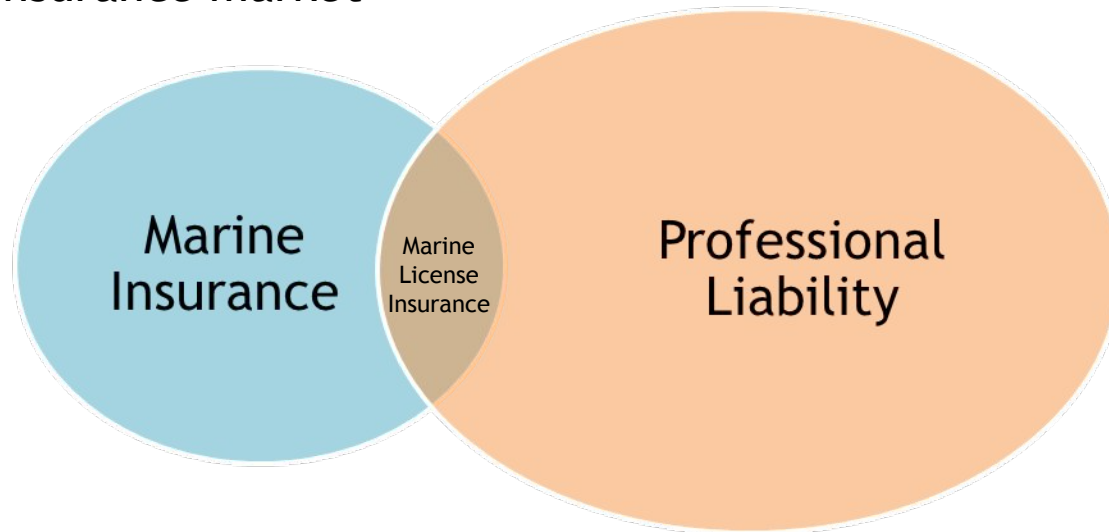
License can be revoked, suspended, or reduced in grade as a result of casualty involving ordinary negligence





License Insurance - Why So Few Options?

Professional liability insurance for licensed mariners sits in a gray area which straddles the mainstream professional liability market and the marine insurance market



The universe of potential policyholders is very small when compared to other lines of coverage, making marine license insurance a less attractive investment for insurance carriers





How Do License & Liability Insurance Policies Respond to Exposures?

Available Coverages for USCG-licensed Mariners

License Protection & Defense

Fines & Penalties

Civil Legal Defense / Criminal Defense

Civil Legal Liability

Loss of Income

What IS and ISN'T covered?





Case Study

A Close Call...

[Video Footage](#)





Case Study - A Close Call

Claim involves a wheelman employed by a large transportation company operating a 138- by 44-foot hull (6,140 hp) tugboat

- Captain Crunch is exiting a Lock bordering Wisconsin and Minnesota heading down river with 15 barges in tow
- The vicinity is notoriously tough to navigate despite clear visibility
- Upon exiting the lock, a small fishing boat darts out in front of Crunch's vessel, causing him to rotate steering to avoid the boat
 - Deck hand on watch informs they are approaching shallows
- Simultaneously, the tug is pulled towards the shallow end of the river by current created by the closing lock
 - In an effort to redirect, Crunch adjusts his engines to move away, creating a wheel wash towards the bank





Case Study - A Close Call

The wheel wash piled up on the bank and washed away a floating dock with tied up boats along with moored vessels. It then allided with another floating dock which held in place, allegedly damaging several boats.

- Immediately after the floating dock released, Captain Crunch reported a multitude of small vessels approaching and surrounding his vessel while he attempted to retreat from the area as safely as possible
- The transportation company immediately filed an incident report but video of the incident is believed to be the main driver of USCG investigation
- Due to the USCG investigation, the transportation company was required to hire a third party damage surveyor





Case Study - A Close Call

Results

- Initial survey results reported minimal damage to the dock but many boat owners claiming loss of expensive equipment and/or vessel damage
- Transportation company files a USCG 2692
 - First step in USCG's determination on proceeding with administrative hearing
 - What is the company's and active counsel's role in here?
- USCG does not pursue administrative hearing or further action
- Current admiralty attorney fees?
 - Other considerations?

\$7,000+





Non-Criminal Exposures for USCG Licensed Officers

- License Suspension & Revocation (S&R) Proceedings

1. Suspension and Revocation (S&R) hearings are administrative proceedings before an Administrative Law Judge (ALJ) concerning a Merchant Mariner's Credential, License(s) or Document(s) and the right to hold those documents and serve under them. These proceedings ONLY affect a Merchant Mariner's Credential, License(s) or Document(s) - there is absolutely no criminal aspect to these proceedings, nor are jail sentences or criminal fines imposed.*
2. Because these proceedings are administrative, the Government (Coast Guard) does not provide an attorney or representation for Mariners.* Mariners do, however, have several options in regard to representation at a hearing. A mariner may obtain an attorney at his or her own expense*, seek to obtain an attorney through local clinics/services, choose to have some other non-attorney assist, or choose to represent his or herself.
3. S&R cases begin when a Coast Guard Investigating Officer (IO) files a complaint with the ALJ Docketing Center. This complaint lists the violation(s) allegedly committed by the mariner (also known at this point as the respondent), the IO's findings of fact, and the IO's proposed sanction.
4. After receiving a complaint, the mariner must submit an answer to the complaint with the ALJ Docketing Center within twenty (20) days. The answer must state whether the mariner agrees or disagrees with the facts, allegations, and proposed sanctions asserted in the complaint.
5. Once a complaint is filed and docketed, an ALJ is assigned to the S&R case.

(Source: USCG website)

*Emphasis Added





Non-Criminal Exposures for USCG Licensed Officers

Although S&R hearings are not civil or criminal proceedings, **the Coast Guard commits significant resources to these hearings**

•Example 1

Tug/tow collided with recreational vessel on Tennessee River

- USCG proposed six-month license suspension
- During the hearing, the USCG:
 - Put forth 22 exhibits
 - Called 5 witnesses
 - Had two personnel assigned to the hearing

–The “Respondent”

- Put forth 7 exhibits
- Called 1 witness
- Had 2 attorneys representing him

Final ALJ decision - two-month license suspension





Non-Criminal Exposures for USCG Licensed Officers

Suspension & Revocation Proceedings (Cont.)

•Example 2

Tug/tow collided with recreational vessel in Alamitos Bay, CA

- USCG proposed twelve-month license suspension
 - Negligence - failure to keep a proper lookout
 - Misconduct - relinquishing direction and control to an unlicensed deckhand
- During the hearing, the USCG:
 - Put forth 28 exhibits
 - Called 6 witnesses
 - Had two personnel assigned to the hearing
- The “Respondent”
 - Put forth 76 exhibits
 - Called 1 witness
 - Had 2 attorneys representing him

Final ALJ decision - one-month license suspension





Suspension & Revocation Proceedings - Takeaways

1. The Coast Guard commits significant resources (personnel, money, time) to Suspension & Revocation hearings
2. To properly defend and represent yourself, you will likely need to commit significant resources (the current hourly rate for an admiralty attorney is \$250 to \$350+ per hour)
3. *When properly defended and represented, the ALJ generally reduces the suspension period from the initial suspension recommendation made the Coast Guard
4. Legal expenses in the prior two examples would have been covered by a license insurance policy (with no deductible)
 - Optional coverages





Non-Criminal Exposures for USCG Licensed Officers

- **License Suspension/Revocation Resulting From Ordinary Negligence**

The 2021 Florida Statutes

Chapter 310 - Pilots, Piloting and Pilotage

- **310.101** Grounds for disciplinary action by the board
- Examples of acts by a licensed state pilot or certificated deputy pilot which constitute grounds for disciplinary action include, but are not limited to:
 - (a) Failure to make allowances for the foreseeable effects of wind, current, and tide.
 - (b) Failure to obtain or properly use information available to the pilot.
 - (c) Failure to navigate with caution in restricted visibility.
 - (d) Navigating in channels where the depth of water under the keel is less than the prescribed bottom clearance as recommended by the licensed state pilots of that port and approved by the board.
 - (e) Excessive speed.





Non-Criminal Exposures for USCG Licensed Officers

Civil Liability

- The potential exists for a licensed officer to be the subject of a civil lawsuit brought against them as an individual
- Claims can be infrequent, they have the potential for significant damages and legal costs
- Pilots are more often the subject of civil suits as they typically provide their services as independent contractors under the umbrella of a pilot association





Criminal Exposures for USCG Licensed Officers

MARPOL 73/78

United States is a party, but the treaty is not self-executing;

The Act for the Prevention of Pollution from Ships, (“APPS”) 33 U.S.C. §§ 1901 - 1911

APPS is the law implementing MARPOL in the United States
33 C.F.R. 151.25

Ports and Waterways Safety Act

46 U.S.C. §§ 70001, *et seq*

Clean Water Act - 33 U.S.C. § 1251, *et seq.*

Migratory Bird Act - 16 U.S.C. § 703, *et seq.*





Criminal Exposures for USCG Licensed Officers

Seaman's Manslaughter Act

- Every captain, engineer, pilot, or other person employed on any steamboat or vessel, by whose **misconduct, negligence, or inattention** to his duties on such vessel the life of any person is destroyed, and every owner, charterer, inspector, or other public officer, through whose fraud, neglect, connivance, misconduct, or violation of law the life of any person is destroyed, shall be fined under this title or imprisoned not more than ten years, or both.
- When the owner or charterer of any steamboat or vessel is a corporation, any executive officer of such corporation, for the time being actually charged with the control and management of the operation, equipment, or navigation of such steamboat or vessel, who has **knowingly and willfully** caused or allowed such fraud, neglect, connivance, misconduct, or violation of law, by which the life of any person is destroyed, shall be fined under this title or imprisoned not more than ten years, or both.
 - Conception





Case Study 2

Fire Down Below





Case Study - Fire Down Below

Claim involves two 100 GRT Masters operating 192 Subchapter K vessel carrying up to 600 passengers and 75 crew. One captain is also training another the other one who is new to the vessel.

- Dinner cruise services end for 429 passengers and 35 crew, debarking around 10:00 PM
- Vessel is switched to shore power at ~10:20 PM
- Engine room switchover and shutdown tasks are completed and training Captain departs vessel at ~10:55 PM once all machinery and vessel-related operations are complete





Case Study - Fire Down Below

A fire begins between the restaurant and galley with no approximate location based on video footage.

- 911 is called and first responders (fire dept. and state police) arrive on scene
 - USCG arrives on scene within an hour and captain(s) remain compliant and helpful with all authorities
 - NTSB joins in the investigation the following day
 - ATF also joins for initial strategy meetings, interviews, and investigations





Case Study - Fire Down Below

Initial beliefs are that fire originated from an electrical socket further setting a wall on fire only to be amplified by a box of sternos catching on fire.

- Captain states that some restaurant staff have reported sparks coming from an outlet within the area in question





Case Study - Fire Down Below

All crew will be interviewed by each organization over the course of 3 days following the fire.

Insured captain's counsel (360) along with captain's company's counsel sit in and are represented by retained and in-house fire experts. Federal agencies also provide their own experts.

- Destructive testing occurs the following morning, two days after the initial fire
- Captain's company's counsel requests current specialty counsel remain involved throughout investigation and file a notice of interested party





Case Study - Fire Down Below

Late in the investigation an ATF expert discovers cigarette butts on the deck:

- Both captains attest to working protocols stating cigarette smoking and vaping is accepted outdoors
- One week prior the company sent out a zero tolerance smoking policy but no changes were made to signs and containers remained in place
- The night of the fire members of the crew and staff were witnessed smoking and were not reprimanded
- The following morning one of the captains found a cigarette butt on the bridge and threw it in the trash...





Case Study - Fire Down Below

Destructive testing takes place and:

- Working expert opinion is that large amounts of rust underneath the floor boards lead to oxygenation and combustion of the initial fire area.
- It was also noted that 6 years prior the vessel received a fiber optic installation which could have disturbed the electrical system, leading to or contributing to the fire





Case Study - Fire Down Below

Results:

- Ultimately, the results of the investigation led to exoneration of both captains
- However, in the event any level of uncertainty arose during the investigation or results, both captains would have likely found themselves sitting in an S/R hearing especially if there was any evidence of cigarette use inside the ship and/or related to the ultimate loss, major liability concerns would have arisen
- Total costs incurred:

\$12,361





USCG Classification of Marine Incidents

A Look at the Numbers

- 2019 - 3,537 investigations
+1,326 navigational accidents
 - 2020 - 2,880 investigations
+1,211 navigational accidents
 - 2021- 4,087 investigations
+1,221 navigational accidents
 - **2022- 4,603 investigations**
+ **1,090 navigational accidents**
- 764 SMI's
 - 260 mariner & passenger deaths/critical injuries
 - 612 SMI's
 - 246 mariner & passenger deaths/critical injuries
 - 605 SMI's
 - 215 mariner & passenger deaths/critical injuries
 - 522 SMI's
 - **166 mariner & passenger deaths/critical injuries**

Reportable Incidents

- Groundings & bridge strikes
- Loss of vessel control
- Questionable vessel seaworthiness/safety
- Significant environmental harm
- Injuries
- Loss of life
- Property damage - >\$75K

Reportable incidents are key to Policy definitions





Claims/Incident Reporting Process

- **STEP 1- MAKE THE CALL**
 - Dedicated toll free number available 24/7
 - Attorney will request preliminary information
- **STEP 2- ATTORNEY ASSIGNED**
 - Contact and cooperate with USCG in fulfillment of all mandatory reporting requirements following a marine casualty
 - Based on preliminary information obtained from the hotline admiralty attorney, a qualified attorney in that region will be contacted on mariner's behalf
- **STEP 3- ATTORNEY WILL CONTACT CREWMEMBER**
 - Attorney will discuss initial steps to protect interests of crewmember
 - If possible, attorney will go immediately to scene
 - If not possible, attorney will continue to handle via telephone/email and then make arrangements to meet in person as soon as possible





Connect With Me

Chris Buseman - Vice President, 360 Coverage Pros Mariner Liability Insurance (chris_buseman@ajg.com) Direct - (215) 385-4231

