

Introducción a los Problemas de Seguro Marítimo en la Industria Pesquera

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Abstracto

Seguro marítimo en la industria pesquera comprende dos campos de seguro: "Seguro contra el casco" y "Seguro de protección e indemnización". Han resultado muchos problemas al tratar de obtener tarifas razonables para ser cubierto en ambos campos. En los Estados Unidos, las áreas de Boston, Massachusetts; New Bedford, Massachusetts; y Tampa, Florida, son las más afectadas por estos problemas. En el Caribe, Barbados principalmente es afectado por estos problemas. Las tarifas en Boston, Massachusetts, han subido tan alto como 11 y 12 por ciento. En New Bedford, Massachusetts, se reportó un caso en el cual la tarifa subió en un 25 por ciento. En Tampa, Florida, tarifas de 10% y más, se reportan. Puesto que tarifas de seguros muy altas hacen la pesca improductiva y son causa de desempleo en la industria pesquera, es necesario encontrar medios para mejorar la situación de seguros marítimos.

Some Observation on the Insurance of Commercial Fishing Vessels

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This paper has the purpose of clarifying the problem of what the insurance of commercial fishing vessels in the United States of America means for vessel owners and crews on one side and the insurance companies on the other.

The insurance problems facing the fishing industry in the United States itself differ in important respects from one part of the country to another. Insurance problems facing the fishing industries in some of the other countries represented here today also differ, I have no doubt, from the situation in the United States of America. In illuminating points of difference as well as points of similarity, in the mutual exchange of information and views, and in the discussion of unsolved problems, the Gulf and Caribbean Fisheries Institute has an important and constructive role to play.

This paper will discuss the insurance problem in a general way, despite the dangers of generalizations. To begin with, an "insurance market" can often be a dynamic affair that changes frequently and quietly. The supply and demand for insurance are subject to frequent adjustments. Thus, not only are rates changeable but also are the number of vessels requiring insurance and the number of insurers willing to supply such insurance. A new insurer willing to provide coverage in a given area might begin, not with a

public announcement inviting all those interested to apply, but rather with the sale of a single policy in that area. The insurance company may be experimenting and to be sort of wading into the water very cautiously.

Moreover, there are variations in the "insurance market", depending on the different types of boats on which coverage is sought. For example, the nature of the insurance problem, rates, availability of insurers, etc., may differ not only regionally but also with respect to whether one is referring to shrimp boats, sponge boats, oyster boats, tuna clippers, scallop-dredgers, pogie boats, steel trawlers, wooden boats and also to whether one is referring to boats that go out only for the day or for extended periods to fishing banks. Then there are variations in the "insurance market" depending on the type of vessel ownership, that is, company owned fleets as compared to single individually owned fishing vessels.

Further, any statement to the effect that the loss experience is worse in one type of coverage than in another, e.g., worse in Protection & Indemnity (liability) coverage than it is in Hull, would have to be broken down analytically by regions. For example, on the Gulf, P & I loss experience has recently been better than the Hull experience with the reverse being true in New England.

Five months ago I began to look into this specialized field of commercial fishery insurance. Two of the earliest observations made were rather startling ones.

First, there is an absence of sales promotional material designed to get fishing vessel owners to buy insurance from one company rather than another. Insurance companies, like other types of commercial enterprise, are generally interested in increasing their sales. In many other types of insurance, life, fire, casualty, as well as marine for industries other than commercial fishing, a considerable amount of sales promotional material is put out by the insurance companies. There is an absence of any indication of eagerness on the part of insurance companies to increase their sales of insurance to owners of fishing vessels.

Secondly, the individual commercial fishing vessel owner is not cost conscious as a matter of principle. The cost control side of the fishing business becomes important to him only at a time of and in the face of diminishing business. The sudden concentration of attention within the fishing industry on the high cost of insurance is taking place during a time when the financial capacity may not be there to meet the problem fully.

The insurance of fishing vessels has to do with the seaworthiness of hulls, the maintenance of equipment, and the operation and safety at sea of vessels and crews engaged in the business of catching fish. The losses suffered by insurance companies in connection with Hull as well as P&I coverages on commercial fishing vessels have been persistently high in recent years. Particularly in the New England area, injury verdicts have gone up tremendously, as have acquisition costs, shipyard bills and other operational items. With regard to P&I losses, the courts of Massachusetts are said to have made the fishing vessel owner an "insurer" of the safety of the crew members. The vessel owner is held to an absolute warranty of seaworthiness. It has been a losing proposition for the insurance companies despite increases in premiums.

Many insurance companies have, as a result of continuous losses, dropped

out and are not selling either P&I or Hull coverage any longer. A few that have hung on have raised their premiums to a point where individual owners of a single vessel or of two or three vessels are complaining that the premiums charged are so high as to make it prohibitive as a cost item. What can vessel owners and crews do to bring accident losses down and thereby the premiums? What should be done to get vessel owners to maintain the vessel, the fixed equipment, the safety equipment, in as good condition, let us say, as the fishing gear?

Statistics on commercial fishing insurance are not easily obtained because the insurance companies have not generally separated out for publication the fishing boat figures from their marine figures generally. Rating procedures in use by the insurance companies, as will be shown later, do not put maximum weight on statistics. As a result, they have not gotten together on a consolidation of their respective records on commercial fishing boats.

From a social point of view, preventing a loss from happening is more desirable than insurance. Although insurance protects the individual against loss, society must bear the actual loss, regardless of the insurance. It follows, therefore, that from a social point of view, premium rates should be fixed high enough to encourage prevention measures by the insured.

It has been said that the best safety device is a careful man. The presence of mechanical devices should not be permitted to produce an illusion of safety. They must be efficiently maintained and operated, for all mechanical aids necessarily depend on, and may be ineffective because of, the human factor. The insurance companies may show where loss prevention efforts should be increased, but such engineering advice is useless unless the vessel owner and crew really cooperate and act on the advice. The insurance companies may offer lower premium rates for better safety conditions and demand higher rates for inferior conditions, or even refuse coverage if conditions are too bad. Thus, the insurance company can appeal to the pocket-book. They can not go beyond this. Prevention is a matter for the individual vessel owner and crew. The existence of insurance should not reduce safety precautions; insurance should not lead to a spirit of recklessness.

Insurance is based on experience; the premiums are fixed on the basis of experience. The accumulated premiums of many are the funds from which losses are paid. The sale of insurance is a sale of a promise to pay money if a loss occurs. The premium is the payment for the promise. The capacity of insurance companies to perform on their promises when called upon to do so is based on the adequacy of the accumulated premiums which are the source of funds from which the losses are paid.

Next, the hazards involved in P&I and in Hull coverage are in many respects closely inter-related and duplicate each other. Making some change in the Hull (structure) also affects the P&I side of the risk; bringing in safety equipment to protect the crew against injury also affects the Hull side of the risk. In fact, the Hull business of an insurer that is writing only Hull in any given area, is in a fundamental sense dependent on the availability in that area of insurers selling P&I. Vessel owners need both and cannot function with just one of these coverages. The Hull insurer would lose its hull business if there were no P&I insurer around to sell P&I coverage to the same vessel owner.

The hazards of fishing vessels with their close working quarters are such

that the underwriting of these vessels calls for special care. Marine insurance rates are not regulated by the supervisory insurance authorities. Classification of risks does not play a large part in rate making for fishing vessels. There is no manual of rates to which one can refer to find out what the premium rate will be for a vessel of a certain class, operating in a designated area, etc. It is a matter of negotiation between the vessel owner's broker and the insurance company. However, the insurance company does take into account the loss record and standing of the vessel owner, and also the record of premiums and losses on risks submitted by the broker. The insurance underwriter also consults records of his general experience with fishing vessels in the particular area, etc.

Some insurance companies have begun to insist on a more complete physical survey of the vessel by a competent marine surveyor, covering also fire fighting equipment, general maintenance, worth and general reputation not only of the vessel owner but also of the operating personnel, whether the venture is or has been making money, whether the owner is keeping his maintenance bills, etc., on a current basis, how the vessel is mortgaged, etc.

Some insurance companies give percentage rate deductions to a fleet based on the number of vessels in the fleet. Other insurance companies feel it is not logical to give so-called fleet credits immediately but prefer to let a fleet earn such credits by good experience. Some insurance companies are for rating purposes tending to be increasingly wary of fleet operations, feeling that a number are really single vessel ownerships banding together to form a fictitious fleet with the aim of getting preferred rating. Thus in practice, the rating methods in use are the result of experience flavored by competition and what is called within the insurance industry "judgment rating"—sort of what one might call "flair" or "feel" or intuitive insight.

Generally speaking, insurance companies issue as a basic policy form for fishing vessels, aside from any special riders they may attach, the so-called American Institute Time Hull Form, the same one that they use for large oceangoing tonnage. There has been some feeling recently within the insurance industry that the form is not stringent enough for small fishing hulls and that it was never designed for small tonnage. For P&I coverage of fishing vessels, the companies generally use the Inland Vessel P&I Form or the Ocean Vessel P&I Form, or some variant of either.

Lower premium rates prevailing in other kinds of insurance, such as workmen's compensation covering workers on land, do not suffice for P&I coverage on fishing vessels. What this means is that the loss experience of insurance companies in connection with worker's accidents on land, with, among other controls, maximum amounts for specified injuries, fixed by statute and not left to a court verdict, has been much better than the losses of insurance companies in connection with injuries to crewmen working on board fishing vessels. Therefore, pessimism on the part of the insurance company is justified and the premium should be fixed high, so that more is available to be put aside for future losses.

A fundamental principle of marine insurance is that the contract is *uberrimae fidei*, that is, one based on the utmost good faith. A basic foundation stone of insurance is that the insured act as if there were no insurance. If the utmost good faith is not observed by the vessel owner or by an intermediary (broker) employed in the transaction, the aggrieved party is entitled

morally and legally to call it "quits". In practice, a duty rests on the vessel owner, and the crew whose interests are tied with the interests of the vessel owner, and on the broker, to disclose all material facts and to make no misrepresentation on any subject related to the risk, such as would influence an insurer in considering whether to accept or decline the risk. The so-called Sue & Labor Clause which appears in every marine insurance policy means in substance that, in dealing with an accident or with a loss, the insured vessel owner should act as if he were uninsured.

I am sure you have all heard the phrase "moral hazard" in connection with insurance. The term "moral hazard" as distinguished from "physical hazard" is applied to such considerations as the character, habits, mental attitudes of the individual, etc. Moral hazards are concerned entirely with the attitude and conduct of the insured. Actually, I think it would be better and more accurate to use the term "psychological hazard" because there are mental attitudes resulting from carelessness that most decidedly contribute to a risk and yet in no sense involve moral turpitude.

The moral hazard faced by an insurance company is not limited to the personal or business ethics of the insured or to malice on his part.

There are various other aspects of moral hazard. These include such conduct as poor seamanship; disdain of training needed for proper use of scientific navigating instruments; carelessness in equipment maintenance; resorting to blind navigating in fogs; failure to pay attention to charts; maintaining the decks and the engineers rooms in bad condition; dropping cigarettes on decks where oil is in abundance; pouring oil in the bilge; using all personnel on the vessel to help bring in the net; leaving no one on watch in the engine room; allowing drunks to get on board; disinterest in and ignorance as to how the engine works; as to how to judge its performance; as to how to tune it up; as to how to replace defective parts, so that motors will not be permitted to run until they fall apart, etc.; venturing out too far, looking for new fishing banks, for new shrimp beds, staying out until the last moment despite weather conditions, etc.

Moral hazard, once its presence is observed, is not rateable and therefore is not insurable. By that, I mean that an increase in the premium is not sufficient compensation for assuming a known moral hazard. Insuring physical hazards resolves itself into a matter of securing an adequate rate for any specific risk. The premium rate is presumed to measure the physical hazard but does not give any consideration to the element of moral hazard. If the existence of a serious element of moral hazard is suspected, the insurance company can resort to "rating down the risk," that is, scaling down the amount of insurance the insurance company will provide. Thus, if the vessel is worth \$75,000 the insurance company may agree to insure it only for \$50,000. However, once the existence of a serious element of moral hazard is established, the insurance company has only one choice and that is to cancel the insurance and get off the risk.

The moral hazard of psychological attitude that pervades the field of commercial fishing is not an individual matter, but a group matter. It is not primarily a matter of race or nationality or culture, but rather an occupational group matter. The occupational group is one in which the individual is willing to undergo the loneliness of the open seas in a small boat. No agricultural workers, no factory workers, certainly no office workers, have

such a rough life; even a migrant worker's habitation on land is better. This is a life of great courage and self-confidence. There is a strong streak of fatalism in the fishermen's character. That very fatalism comes with it a disdain for accident prevention methods. Therefore, helping the industry to solve its insurance problem becomes a problem of reconciling these character traits with a persistent and continuous observance of safety precautions.

The problem of fishing vessel insurance is clearly not a simple one and there is no simple answer or solution. There are a number of possible measures which merit consideration by all groups concerned. A list may be useful in stimulating further consideration and discussion.

1. Commercial fishing vessels should be subject to official standards, with inspection and certification by recognized surveyors, plus a follow-up procedure. It has been suggested that fishing vessels should be brought within the purview of the U. S. Coast Guard, with a view of their complying with its construction and maintenance standards imposed, for example, on passenger and cargo vessels; e.g., as to hull, engine, installations, loading equipment, safety appliances, rescue apparatus, periodic drills in use of equipment, etc. This might be tied in with a system of industry self-regulation; that is, an industry classification system with a Government agency accepting the Industry's Certificates.

2. Some agency, whether governmental or private, should be empowered to establish and certify the qualifications for seagoing personnel on fishing vessels. Some regulations or standards should be cooperatively developed within the fishing industry with the backing of Government enforcement of such Industry developed standards. There should be a Government regulation requiring that the master, engineer, and navigating personnel on commercial fishing vessels be licensed. If licensing were to be required, my own feeling would tend toward a limited system of licensing; that is, no licenses to new personnel without training and a qualifying examination. Those captains, masters, engineers, and navigating personnel already operating as such for years, should not be bothered. Finally, crewmen should not just be required to be competent fishermen but also competent seamen.

3. Training program for personnel: Vessel owners and crews should develop cooperatively some kind of practical group-study or discussion meeting designed to improve skills in seamanship, use of instruments, the handling and maintenance of power equipment, safety methods, proper radio procedure, etc.

4. A federal law limiting claims for each accident should be enacted. A ceiling on amounts for death and injuries should be fixed by statute. A suggestive analogy pointed to is what has been done in the field of Workmen's Compensation covering occupational illnesses and injuries on land.

5. The insurance companies should inspect and classify fishing vessels for the purpose of rate fixing in accordance with type, age, physical characteristics, etc. The insurance companies should consider the possibilities of consolidating the experience of the separate insurance companies and of making it public; of developing some plan of analytic or statistical rating, based on a classification plan or register or risks.

6. Both insurance companies and vessel owners should expand the use of policies with deductibles, so that insurance companies will not be burdened with a multiplicity of small claims.

7. Insurance companies should insist on an agreed adequate standard of safety before insuring. The insurance companies should offer inducements by lower rates on a risk where it is above the average and demand higher rates where it is below the average. This would provide a dollar incentive to observe good standards of construction and to train crews to guard the safety of vessels. Once a vessel owner gives concrete evidence that he is trying to improve the conditions of the risk, the insurance companies should aid him actively in this effort. The insurance companies should not feel that they are fully carrying out their role in cases where, having asked for and received a sufficiently high premium, they remain passive thereafter, insofar as engineering the risk is concerned.

8. Insurance companies should publish a pamphlet in all needed languages explaining in simple fashion what the obligations of the insurance companies are to the insured vessel owner and of the insured vessel owner to the insurance company. Such a pamphlet should point out the limiting terms and conditions of the policy and what these terms and conditions mean in terms of actions on the part of vessel owner and crew. Obviously, an insurance company does not always know for what it may later find itself liable. But certainly the well-established factual precedents can be brought to the attention of vessel owners and crews.

9. Insurance companies should make available periodically to fishing vessel owners a list of percentage differences in insurance premium rates for varying types of fishing vessels and also for somewhat comparable commercial vessels outside the fishing industry, to arouse the owner's interest in the possibilities of getting better rates through better maintenance and few losses. The brokers, particularly, would have to cooperate, since they play so large a part in the fixing of the agreed rate in so many cases.

10. A suggestion has been made for the setting up of a Commission to examine the whole insurance question, comprehensively and systematically, and to prepare a report with findings and recommendations. On this Commission there should be representatives of the fishermen, the vessel owners, the banker-mortgagees, the insurance brokers and the insurance companies. Such a Commission should strive to bring about an integrated approach to the insurance problem, with continuing long-range objectives. One of my impressions is that there has been neither an integrated nor a steady, persistent attention over the years to the insurance problem. The insurance problem should not be heard just during critical stages in which the fishing industry may find itself; that is to say, the Commission should try to create a framework for dealing with the problem that will do away with what has apparently thus far been a crisis approach. This Commission should work for a unity of purpose now absent, a unity among the various groups, fishermen, vessel owners, brokers, and insurance companies.

STATISTICAL APPENDIX

A.

The figures which follow immediately, made available by one insurance company, are a recapitulation of Hull fishing vessel statistics covering an 8 year period (1946-1953). The region included under these figures extends from the Gulf of New England, from Brownsville, Texas to Eastport, Maine.

Year	Premiums (Gross Less Returns)	Losses Paid Less Salvage	Ratio
1946	307,848	176,532	57%
1947	358,028	268,398	70%
1948	592,220	322,589	54%
1949	637,929	562,150	88%
1950	706,609	417,603	58%
1951	833,447	466,871	56%
1952	673,999	816,885	121%
1953	684,744	525,293	76%

The losses estimated and still outstanding and unpaid as of 12/31/53 were reported to be \$231,672. If one adds this figure to the losses actually paid out during 1953 amounting to \$525,293 the ratio of losses (incurred) to premiums is 110%.

B.

The same insurance company was able to supply a breakdown of the above figures only through 1951, and this breakdown follows:

Class	1946			1947			1948		
	Premiums	Losses	Ratio	Premiums	Losses	Ratio	Premiums	Losses	Ratio
Menhaden:									
Marine	68,867	9,217	13%	83,245	17,000	20%	136,822	52,748	39%
Fire	105	.....	.....	.....	.....	.....	84	.....	.....
Auxiliary Schooners:									
Marine	126,383	69,030	55%	146,461	133,094	91%	212,141	161,483	76%
Fire	.....	.....	.....	.....	.....	.....	375	.....	.....
Trawlers:									
Marine	75,735	88,908	117%	74,707	98,719	132%	81,741	41,889	51%
Fire	.....	.....	.....	.....	.....	.....	.....	.....	.....
Miscellaneous:									
Marine	3,978	2,027	51%	8,193	3,162	39%	14,127	378	3%
Fire	3,530	1,793	51%	3,478	5,175	149%	2,426	.....	.....
Shrimp & Sponge									
Diesel:									
Marine	17,567	5,492	31%	28,250	8,588	30%	134,038	54,193	40%
Fire	6,598	.....	.....	6,536	114	1.7%	4,186	245	6%
Shrimp & Sponge Gas:									
Marine	1,128	.....	.....	4,529	2,546	56%	6,118	2,658	43%
Fire	3,957	65	1.6%	2,629	.....	.....	912	8,995	986%
Totals:									
Marine	293,658	174,674	59%	345,385	263,109	76%	584,987	313,349	54%
Fire	14,190	1,858	13%	12,643	5,289	42%	7,233	9,240	128%

B (cont.)

Class	1949			1950			1951		
	Premiums	Losses	Ratio	Premiums	Losses	Ratio	Premiums	Losses	Ratio
Menhaden:									
Marine	168,785	73,629	44%	161,642	20,019	12%	176,312	22,669	13%
Fire	1,485	....	....	333	....	....	300	....	....
Auxiliary Schooners:									
Marine	216,234	340,419	157%	200,204	168,413	84%	260,421	110,630	42%
Fire	....	....	....	....	....	....	36	....	....
Trawlers:									
Marine	45,185	28,432	63%	42,044	24,306	58%	23,038	41,470	180%
Fire	240	....	....	849	....	....	....	....	....
Miscellaneous:									
Marine	32,881	16,551	50%	48,092	4,357	9%	43,431	17,861	41%
Fire	485	....	....	1,011	....	....	684	....	....
Shrimp & Sponge									
Diesel:									
Marine	164,513	99,136	60%	244,989	179,497	73%	322,907	268,552	83%
Fire	2,950	732	25%	3,657	9,174	251%	2,527	66	2.6%
Shrimp & Sponge									
Gas:									
Marine	3,517	3,251	92%	2,261	4,075	180%	3,066	5,623	183%
Fire	1,654	....	....	1,527	7,762	508%	725	....	....
Totals:									
Marine	631,115	561,418	89%	699,232	400,667	57%	829,175	466,805	56%
Fire	6,814	732	11%	7,377	16,936	230%	4,272	66	1.5%

C.

The next figures to be presented summarize the experience met by an insurance company in connection with a fleet of shrimp boats operating in the Gulf. For a period of 4 years, 1948-1952, the business was very profitable; the loss ratio was very low, about 1½%, and then:

Year	PREMIUMS			LOSSES		
	Hull	P & I	Number	Paid	Outstanding Estimated	Total
7/25— 7/53	14,067	5,100	1	1,750	....	1,750
7/53— 7/54	14,211	5,049	4	30,000	37,000	67,000
7/54—10/54	5,190	1,393	3	....	60,000	60,000
Total	33,468	11,542	8	31,750	97,000	128,750

D.

On New England Hull business, one insurance company told me that on steel trawlers, during the period 1949-1953, its average loss ratio on gross premiums, that is before deducting expenses and commissions, was 99.9%; on wooden fishing boats its loss ratio was 91.9%.

About 50% of the ocean marine Hull business originating on the Pacific Coast of the United States relates to fishing vessels, most of it on tuna clippers. The following resumé of premiums and losses as of 11/30/53 was compiled by the Pacific Coast Hull Association from figures supplied by member insurance companies of that Association.

Year	Commissions and Returns Premiums Less	Including Outstandings Losses Less Recoveries	Ratio Loss
WOOD			
1948	\$1,241,149.25	\$ 967,231.33	77.39
1949	1,323,187.67	1,278,431.03	96.62
1950	1,464,184.05	1,263,844.99	86.32
1951	1,727,851.27	2,473,373.57	143.15
1952	1,584,893.34	1,982,006.60	125.06
1953	532,952.20	525,847.14	98.67
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	\$7,874,217.78	\$8,490,734.66	107.83
STEEL			
1948	209,912.02	55,412.64	26.40
1949	248,223.54	11,482.35	4.62
1950	272,440.94	176,273.70	64.70
1951	297,385.29	99,824.61	33.57
1952	366,678.59	712,413.66	194.29
1953	160,344.56	53,130.52	33.13
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	\$1,554,984.94	\$1,108,537.48	71.29
WOOD AND STEEL			
1948	1,451,061.27	1,022,643.97	70.48
1949	1,571,411.21	1,289,913.38	82.09
1950	1,736,624.99	1,440,118.69	82.93
1951	2,025,236.56	2,573,198.18	127.06
1952	1,951,571.93	2,694,420.26	138.06
1953	693,296.76	578,977.66	83.51
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	\$9,429,202.72	\$9,599,272.14	101.80

Algunas Observaciones Sobre el Seguro de Barcos Pesqueros Comerciales

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Abstracto

El abastecimiento y la demanda por seguro para botes pesqueros, están sujetos a frecuentes ajustes, dependiendo sobre el número de tipos de botes que requieren seguro. Hay una falta de propaganda en el caso de seguro para botes pesqueros, en contraste con otros tipos de seguro.

Los dueños de botes pesqueros no parecen comprender los costos de seguro hasta que la industria está deprimida. El costo del seguro está relacionado con el valor del casco, mantenimiento del equipo y la seguridad de operación del bajel. Las pérdidas han sido grandes debido a negligencia de parte de los dueños y la tripulación, y ésto ha causado una elevación en las tarifas. Standards para los barcos, inspecciones periódicas y entrenamiento de las tripulaciones son deseables y reducirían las pérdidas así como las tarifas de seguro. Se necesitan leyes para limitar los reclamos por accidentes individuales.

Labor Accident Law of the Republic of Cuba and Its Application to the Fishing Industry

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History and Origin of Workmen's Compensation in Cuba

The first Workmen's Compensation Law enacted in the Republic of Cuba dates back to the year 1916; from the very beginning it was one of the most complete and advanced Workmen's Compensation laws in the world.

The Republic of Cuba by complying with the international agreements derived from the Conferences held by the International Labor Office in Geneva, made very rapid progress in favor of the Cuban working classes, progress that most countries have not achieved during a large number of years.

In Anglo-Saxon countries, long before the enactment of Workmen's Compensation Legislation, they had in their common law what was known as Employer's Liability; a rudimentary Workmen's Compensation for accidents incurred during working hours. With the progress and modernization of industrial methods during the machine age, the frequency of working risks was increased and the simple benefits of the Employer's Liability Laws were not sufficient to cope with the new situation. Thus the beginning of specific Workmen's Compensation legislation; Employer's liability laws were in some instances completely rescinded and in some others they were not, but its application became less frequent.

In our Republic, we do not have conflicts between Employer's Liability