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### HEARING LOSS ALERT

Employers are paying over a quarter a million dollars in noise reduction studies to avoid paying their liability to you. Further, rules regarding hearing loss are being lobbied in Congress by employers for a change. Most law firms recommend that the longshoreman wait until he retires. However, most employers will contend and are winning arguments that the exposure in their terminal could not have contributed to the loss, thus avoiding liability.

It is our recommendation that you have an audiogram now, and if you have a recognized hearing loss that you make a claim now. A recognized hearing loss is one that is recognized by the AMA Guide for Impairment as rating at four levels of testing in excess of 100. If you have a hearing loss now, you can recover your money now and also identify the employer before they fully prepare to defend against your claim with noise reduction studies.

By filing a claim now, you can recover and identify your current terminal as the responsible employer before the law changes. You can always file another claim when you retire and recover for the hearing loss again. The court will apply a credit at the lower rates today and you will recover at the higher rate for the loss- with a credit at the lowest rate.

It is our recommendation that you file a claim for a hearing loss now. It is better to get your money now than to wait until 20 years when the law may change or noise reduction studies are in place.

In Maersk Stevedoring Company v. Container Stevedoring Company, 2000 U.S. App. LEXIS 518 (9<sup>th</sup> Cir. 2000) the last employer did not have to pay the hearing loss claimant.

<sup>1</sup>Liability is shouldered by the employer “ covering the risk at the tie of the most recent injury that bears a causal relation to the disability.” Id. at 1336. **A rationale connection must exist between the length of the claimant’s employment with the potentially liable employer and the contribution to the development and aggravation of the disease. Id.** The court concluded that, the “ audiograms which conclusively establish that there was not any exacerbation while working for the second employer eliminates any possibility of liability.” Id. at p. 4.

In Portland v. Director, OWCP, 932 F.2d 836 (9<sup>th</sup> Cir. 1991)” the court rejected any reading that Cordero would impose liability on an employer who could not, even theoretically, have contributed to the causation of disability. Id. at 841. “ Minimal exposure to offensive stimuli at a place of employment is not sufficient to place responsibility on a covered employer in the absence of proof that exposure in such a quantities had the potential to cause the disease.” Id.

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<sup>1</sup> The last employer rule was adopted by the Ninth circuit in Cordero v. Triple A Machine Shop, 580