

PRESENTED AT

The University of Texas School of Law
30th Annual David W. Robertson
Admiralty and Maritime Law Conference

October 15, 2021
Royal Sonesta Hotel Houston ■ Houston, Texas

RECENT DEVELOPMENTS IN ADMIRALTY AND MARITIME LAW AT THE NATIONAL LEVEL AND IN THE FIFTH AND ELEVENTH CIRCUITS

Michael F. Sturley
Fannie Coplin Regents Chair in Law
University of Texas at Austin

Matthew H. Ammerman
LAW OFFICE OF MATTHEW H. AMMERMAN, P.C.

Author Contact Information:

Michael F. Sturley
University of Texas School of Law
msturley@law.utexas.edu
512-232-1350

Matthew H. Ammerman
LAW OFFICE OF MATTHEW H. AMMERMAN,
P.C.
mha@MaritimeDefense.net
713-227-1404

RECENT DEVELOPMENTS IN ADMIRALTY AND MARITIME LAW AT THE NATIONAL LEVEL AND IN THE FIFTH AND ELEVENTH CIRCUITS

I. <u>INTRODUCTION</u>	1
II. <u>THE WORK OF THE SUPREME COURT</u>	3
A. Appealability of Remand Orders in Removal Cases	3
<i>BP P.L.C. v. Mayor and City Council of Baltimore</i>	
B. Grant of Certiorari	5
<i>Servotronics, Inc. v. Rolls-Royce PLC</i>	
C. Denials of Certiorari	6
<i>Massachusetts Lobstermen’s Association v. Raimondo</i>	
<i>Big Port Service DMCC Ltd. v. China Shipping Container Lines Co.</i>	
<i>LaCourse v. PAE Worldwide Inc.</i>	
<i>Doty v. Tappan Zee Constructors, LLC</i>	
III. <u>SELECTED DECISIONS FROM AROUND THE COUNTRY</u>	8
A. Subject-Matter Jurisdiction in Maritime Cases	8
1. Admiralty Jurisdiction in Tort Cases	8
a. The <i>Grubart</i> test	8
<i>Hoblick v. United States</i>	
<i>Wineland v. Air & Liquid Sys. Corp.</i>	
b. The “navigable water” definition	10
<i>In re Garrett</i>	
<i>In re Grants Pass Jetboats, Inc.</i>	
<i>Davis v. Blue Aircraft, LLC</i>	
2. Admiralty Jurisdiction in Contract Cases	13
<i>Zim American Integrated Shipping Servs. Co., LLC v. Sportswear Group, LLC</i>	
<i>Lieblong v. Abella</i>	
3. Other Admiralty Jurisdiction Issues	15
<i>Addax Energy SA v. M/V Yasa H. Mulla</i>	
B. Seaman Status	16
<i>Doty v. Tappan Zee Constructors, LLC</i>	
<i>Sanchez v. Smart Fabricators of Texas</i>	

C. Carriage of Goods	17
1. Negligent Third Parties and Himalaya Clauses	17
<i>Progressive Rail, Inc. v. CSX Transportation, Inc.</i>	
<i>Herod's Stone Design v. Mediterranean Shipping Co.</i>	
2. Time-for-Suit Provisions	19
<i>ELCO Insurance Co. v. Spirit Trucking Co.</i>	
<i>Herod's Stone Design v. Mediterranean Shipping Co.</i>	
3. Removal of COGSA Cases	20
<i>Commissionado de Seguros de Puerto Rico Como Liquidador de Real Legacy Assurance Co. v. Crowley Liner Services Puerto Rico, Inc.</i>	
4. The Current Status of COGSA	22
<i>Hartford Fire Insurance Co. v. Maersk Line</i>	
<i>Saray Dokum ve Madeni Aksam Sanayi Turizm A.S. v. MTS Logistics, Inc.</i>	
<i>Travelers Property Casualty Co. of America v. Apex Shipping Co. (NYC)</i>	
<i>Commissionado de Seguros de Puerto Rico Como Liquidador de Real Legacy Assurance Co. v. Crowley Liner Services Puerto Rico, Inc.</i>	
D. Longshore and Harbor Workers' Compensation Act (LHWCA)	24
1. Average Weekly Wage (AWW) Calculations	24
<i>Martin v. Sundial Marine Tug & Barge Works, Inc.</i>	
2. Attorney's Fees	25
<i>Seachris v. Brady Hamilton Stevedore Co.</i>	
E. Marine Insurance	27
1. The <i>Uberrimae Fidei</i> Doctrine	27
<i>QBE Seguros v. Morales-Vazquez</i>	
<i>Atlantic Specialty Insurance Co. v. Karl's Boat Shop, Inc.</i>	
2. Other Marine Insurance Issues	32
<i>Northwestern Selecta, Inc. v. Guardian Insurance Co</i>	
<i>New York Marine & General Insurance Co. v. Travelers Property Casualty Co. of America</i>	
F. Suits in Admiralty Act	33
<i>Ruan v. United States</i>	
G. Vessel Owner's Limitation of Liability	34
<i>Bensch v. Estate of Umar</i>	
<i>D'Onofio General Contractor Corp. v. Safer,</i>	

H. Maritime Liens	39
<i>Sing Fuels Pte. Ltd. v. M/V Lila Shanghai</i>	
<i>Addax Energy SA v. M/V Yasa H. Mulla</i>	
I. The Clean Water Act	43
<i>Taylor Energy Co., L.L.C. v. Luttrell</i>	
J. Removal	45
<i>Estate of Saravia v. Bayonne Dry Dock & Repair Corp.</i>	
<i>Commissionado de Seguros de Puerto Rico Como Liquidador de Real Legacy Assurance Co. v. Crowley Liner Services Puerto Rico, Inc.</i>	
IV. THE WORK OF THE COURTS IN THE FIFTH AND ELEVENTH CIRCUITS	46
A. Subject-Matter Jurisdiction in Maritime Cases	46
1. Admiralty Jurisdiction in Tort Cases	46
<i>McIntosh v. Royal Caribbean Cruises, Ltd.</i>	
<i>Buland v. NCL (Bahamas) Ltd</i>	
<i>White v. Viera</i>	
<i>Appleby v. NCL (Bahamas), Ltd.</i>	
<i>In re Southern Recycling, L.L.C.</i>	
2. The “Navigable Water” Definition	49
<i>In re Go Rio San Antonio, LLC</i>	
3. The Admiralty Extension Act	50
<i>Delozier v. S2 Energy Operating, LLC</i>	
B. Personal Jurisdiction	51
1. Personal Jurisdiction and Fifth Amendment Due Process	51
<i>Douglass v. Nippon Yusen Kabushiki Kaisha</i>	
2. Personal Jurisdiction and Fourteenth Amendment Due Process	53
<i>PetroSaudi Oil Services, Ltd. v. Hartley</i>	
<i>Weeks Marine Co., LLC v. Landa</i>	
C. Death on the High Seas Act	55
<i>LaCourse v. PAE Worldwide Inc.</i>	
D. The Rights of Seamen	57
1. Seaman Status	57
<i>Sanchez v. Smart Fabricators of Texas, L.L.C.</i>	
<i>Meaux v. Cooper Consolidated, LLC</i>	
<i>Doty v. Tappan Zee</i>	

2. Maintenance and Cure	67
a. Employer's contribution claim against responsible third party	67
<i>Poincon v. Offshore Marine Contractors, Inc.</i>	
a. <i>McCorpen</i> defense	70
<i>Adriatic Marine, L.L.C. v. Harrington</i>	
<i>Taylor v. B&J Martin, Inc.</i>	
<i>Witbart v. Mandara</i>	
3. Comparative Negligence	73
<i>Knight v. Kirby Offshore Marine Pac., L.L.C.</i>	
4. Admissibility of Expert Testimony	76
<i>Buland v. NCL (Bah.) Ltd.</i>	
<i>McGill v. BP Exploration & Production</i>	
<i>Hollies v. Triton Asset Leasing, GMBH</i>	
<i>Riha v. Offshore Service Vessels, LLC</i>	
E. Carriage of Goods	79
1. Ocean Carrier's Action Against an Inland Carrier	79
<i>MOL (America), Inc., v. Hepta Run, Inc.</i>	
2. Time-for-Suit Provisions	81
<i>Mauricio Importadora y Exportadora v. Jet Speed Logistics (USA) LLC</i>	
F. General Maritime Tort Law	81
<i>Garcia v. United States</i>	
<i>Yusko v. NCL (Bah.), Ltd.</i>	
<i>McIntosh v. Royal Caribbean Cruises, Ltd.</i>	
G. Marine Insurance	85
<i>Travelers Property Casualty Co. of America v. Ocean Reef Charters, LLC</i>	
H. Longshore and Harbor Workers' Compensation Act (LHWCA)	87
1. Employer's Exclusivity of Liability Under LHWCA § 5(a)	87
<i>Hulin v. Huntington Ingalls, Inc.</i>	
<i>Barrosse v. Huntington Ingalls Inc.</i>	
<i>Parkman v. W&T Offshore</i>	
2. Borrowed Employee Status	89
<i>Raicevic v. Fieldwood Energy, LLC</i>	
3. The Outer Continental Shelf Lands Act (OCSLA) Extension of LHWCA	93
<i>Owensby & Kritikos, Inc. v. Director [Boudreaux]</i>	

4. Vessel Negligence Actions through LHWCA § 5(b)	95
<i>Anthony v. Deep South Airboats</i>	
<i>Patil v. Amber Lagoon Shipping GmbH & Co</i>	
I. Maritime Liens and Mortgages	97
<i>Caterpillar Financial Services Corp. v. Iztaccihuatl 2501</i>	
<i>Moore v. M/V Sunny United States</i>	
J. Vessel Owner's Limitation of Liability	98
<i>Freedom Unlimited v. Taylor Lane Yacht & Ship, LLC</i>	
<i>In re Callan Marine</i>	
<i>In re Orion Marine Construction, Inc.</i>	
<i>In re Chester J. Marine, LLC</i>	
K. Procedure	102
1. Removal	102
a. Removal into admiralty	102
<i>Ibarra v. Port of Houston Authority</i>	
<i>Alexis v. Hilcorp Energy Co.</i>	
<i>Williams v. Aquachile, Inc.</i>	
<i>White v. Viera</i>	
b. Removal When the Plaintiff Claims Under the Jones Act	105
<i>Hutchins v. Anco Insulations, Inc.</i>	
<i>Sanchez v. Smart Fabricators of Texas, L.L.C.</i>	
2. Forum-Selection Clauses	107
<i>Appleby v. NCL (Bahamas), Ltd.</i>	
L. The BP Gulf Oil Spill Litigation	108
<i>Halliburton Co. v. Chubb Bermuda Insurance Ltd.</i>	

RECENT DEVELOPMENTS IN ADMIRALTY AND MARITIME LAW AT THE NATIONAL LEVEL AND IN THE FIFTH AND ELEVENTH CIRCUITS

Michael F. Sturley
Fannie Coplin Regents Chair in Law
University of Texas
727 East Dean Keeton Street, Austin, Texas 78705
512/232-1350; Fax 512/471-6988
msturley@law.utexas.edu

Matthew H. Ammerman
LAW OFFICE OF MATTHEW H. AMMERMAN, P.C.
2040 North Loop West, Ste. 390, Houston, Texas 77018-8114
713/227-1404; Fax 713/456-2634
mha@MaritimeDefense.net

September 15, 2021

I. INTRODUCTION

This is the twenty-first paper in a series of annual reports on U.S. admiralty and maritime law and practice.¹ In these papers we try to call attention to the principal national-

¹ The preceding twenty papers are Michael F. Sturley & Matthew H. Ammerman, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 45 TUL. MAR. L.J. 549 (2021) [hereinafter *2020 Recent Developments*]; Michael F. Sturley & Matthew H. Ammerman, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 44 TUL. MAR. L.J. 513 (2020) [hereinafter *2019 Recent Developments*]; David W. Robertson, Michael F. Sturley & Matthew H. Ammerman, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 43 TUL. MAR. L.J. 367 (2019) [hereinafter *2018 Recent Developments*]; David W. Robertson, Michael F. Sturley & Matthew H. Ammerman, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 42 TUL. MAR. L.J. 373 (2018) [hereinafter *2017 Recent Developments*]; David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 41 TUL. MAR. L.J. 437 (2017) [hereinafter *2016 Recent Developments*]; David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 40 TUL. MAR. L.J. 343 (2016) [hereinafter *2015 Recent Developments*]; David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 39 TUL. MAR. L.J. 471 (2015) [hereinafter *2014 Recent Developments*]; David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*,

level developments that bear on the work of admiralty judges, lawyers, and scholars, and we look more closely at the relevant work of the U.S. Courts of Appeals for the Fifth and Eleventh Circuits. We do not warrant full coverage, although with respect to the Fifth and Eleventh Circuit Courts of Appeals, we try to be fairly thorough.²

38 TUL. MAR. L.J. 419 (2014) [hereinafter *2013 Recent Developments*]; David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 37 TUL. MAR. L.J. 401 (2013) [hereinafter *2012 Recent Developments*]; David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 36 TUL. MAR. L.J. 425 (2012) [hereinafter *2011 Recent Developments*]; David W. Robertson & Michael F. Sturley, *Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 35 TUL. MAR. L.J. 493 (2011) [hereinafter *2010 Recent Developments*]; David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 34 TUL. MAR. L.J. 443 (2010) [hereinafter *2009 Recent Developments*]; David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 33 TUL. MAR. L.J. 381 (2009) [hereinafter *2008 Recent Developments*]; David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 32 TUL. MAR. L.J. 493 (2008) [hereinafter *2007 Recent Developments*]; David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 31 TUL. MAR. L.J. 463 (2007) [hereinafter *2006 Recent Developments*]; David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 30 TUL. MAR. L.J. 195 (2006) [hereinafter *2005 Recent Developments*]; David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 29 TUL. MAR. L.J. 369 (2005) [hereinafter *2004 Recent Developments*]; David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 16 U.S.F. MAR. L.J. 147 (2004) [hereinafter *2003 Recent Developments*]; David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 27 TUL. MAR. L.J. 495 (2003) [hereinafter *2002 Recent Developments*]; David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 26 TUL. MAR. L.J. 193 (2001) [hereinafter *2001 Recent Developments*].

² We make no attempt to be thorough respecting district court decisions, although we have included some for their information value. “A decision by a federal district judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.” 18 MOORE’S FEDERAL PRACTICE § 134.02[1][d], at 134-26.3 (3d ed. 2007). See also *American Electric Power Co. v. Connecticut*, 564 U.S. 410, 428 (2011) (“[F]ederal district judges, sitting as sole adjudicators, lack authority to render precedential decisions binding other judges, even members

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits

First appeared as part of the conference materials for the
30th Annual David W. Robertson Admiralty and Maritime Law Conference session
"Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits"