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

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I. INTRODUCTION

This is the fourteenth article in a series of annual reports on U.S. admiralty and maritime law and practice.¹ In these articles we try to call attention to the principal na-

¹ The preceding thirteen articles are David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 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

tional-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

II. MISCELLANEOUS DEVELOPMENTS AT THE NATIONAL LEVEL

A. Maximum Compensation Rate Under the LHWCA

Section 10(f)(1) of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 910(f)(1), ties the maximum weekly compensation rate to the national average weekly wage (NAWW). Under the NAWW promulgated on October 1, 2014, the maximum LHWCA compensation for this fiscal year is \$1,377.02.

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], p. 138-24.1 (3d ed. 2007). See also *American Electric Power Co. v. Connecticut*, 131 S. Ct. 2527, 2540 (2011) (“[F]ederal district judges, sitting as sole adjudicators, lack authority to render precedential decisions binding other judges, even members of the same court.”).

III. THE WORK OF THE SUPREME COURT

A. Selected Nonmaritime Decisions

1. General Personal Jurisdiction

Personal jurisdiction is a recurrent issue in maritime cases. We have regularly treated it in previous papers,³ and we provide an analysis of personal jurisdiction below.⁴ As is noted there, the standard approach to assessing the constitutional limitations on personal jurisdiction begins with a distinction between general personal jurisdiction and specific personal jurisdiction. The existence of *general personal jurisdiction* is based on the defendant's general business contacts with the forum state⁵ and enables the exercise of personal jurisdiction in matters unrelated to those contacts. *Specific personal jurisdiction* encompasses cases in which the suit arises out of or relates to the defendant's conduct with the forum state.

At the Supreme Court level, general personal jurisdiction has lately been shrinking. Three years ago we wrote about *Goodyear Dunlop Tire Operations, S.A. v. Brown*. In a case with relatively weak jurisdictional facts, Justice Ginsburg's opinion for the unanimous Court seemed calculated to minimize the sphere of applicability of the general jurisdiction doctrine.⁶ Now comes *Daimler AG v. Bauman*, in which it might be said that Justice Ginsburg has outdone herself.⁷

³ See, e.g., 2013 *Recent Developments*, *supra* note 1, at 506-07; 2012 *Recent Developments*, *supra* note 1, at 478-79; 2011 *Recent Developments*, *supra* note 1, at 466; 2010 *Recent Developments*, *supra* note 1, at 579-81; 2009 *Recent Developments*, *supra* note 1, at 494-95, 550-51; 2008 *Recent Developments*, *supra* note 1, at 450-52, 509-11; 2007 *Recent Developments*, *supra* note 1, at 542, 586-87; 2006 *Recent Developments*, *supra* note 1, at 551-53, 610; 2005 *Recent Developments*, *supra* note 1, at 259-65.

⁴ See *infra* notes 635-678 and accompanying text.

⁵ In addition to constitutionally sufficient contacts, the proponent of personal jurisdiction in a federal district court must also have a federal legislative authorization. When the authorization is Fed. R. Civ. P. 4(k)(1), the forum state for constitutional contacts purposes is the domestic state, e.g., California, where the federal court is located. When the authorization is Rule 4(k)(2), the forum state is the United States.

⁶ See 2011 *Recent Developments*, *supra* note 1, at 438-39 (discussing *Goodyear Dunlop Tire Operations, S.A. v. Brown*, 131 S. Ct. 2846 (2011)).

⁷ 134 S. Ct. 746 (2014). Justice Ginsburg wrote for a Court that was unanimous on the no-jurisdiction result. Justice Sotomayor filed an opinion concurring in the judgment but sharply disagreeing with Justice Ginsburg's reasoning. See, e.g., *id.* at 764 ("In recent years, Americans have grown accustomed to the concept of multinational corporations that are supposedly 'too big to fail'; today the Court deems Daimler 'too big for general jurisdiction.'"); *id.* at 770 (noting that "generations of first-year law students [have] been

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