

PRESENTED AT

25TH ANNUAL ADMIRALTY & MARITIME LAW CONFERENCE

August 26, 2016

Houston, Texas

JUDICIAL INSIGHTS INTO CURRENT ADMIRALTY ISSUES

Moderator: Kenneth G. Engerrand

Panelists:

**Hon. Edith H. Jones, Circuit Judge
United States Court of Appeals for the Fifth Circuit**

**Hon. Gray H. Miller, District Judge
United States District Court for the Southern District of Texas**

**Honorable Nancy K. Johnson, Magistrate Judge
United States District Court for the Southern District of Texas**

Author Contact Information:
Kenneth G. Engerrand, President
Brown Sims, P.C.
1177 West Loop South, Tenth Floor
Houston, Texas 77027
kengerrand@brownsims.com
713.629-1580

TABLE OF CONTENTS

I. REMOVAL ISSUES	1
A. ADMIRALTY JURISDICTION AND THE SAVING-TO-SUITORS CLAUSE.....	1
B. REMOVAL OF ADMIRALTY SUITS	13
1. Federal Question and Diversity Jurisdiction	17
2. Act of Congress Regulating Commerce	24
3. Outer Continental Shelf Lands Act	26
4. Death on the High Seas Act	41
5. Original Admiralty Jurisdiction	45
6. Jury Trials in Admiralty Cases Removed Based On Original Admiralty Jurisdiction	62
7. Decisions Remanding Cases Removed Based On Original Admiralty Jurisdiction.....	72
II. SEAMAN STATUS ISSUES.....	92
A. INTRODUCTION TO THE JONES ACT	92
B. DEVELOPMENT OF THE SEAMAN STATUS TEST	113
C. INTERPRETATION OF THE CONNECTION ELEMENT	138

JUDICIAL INSIGHTS INTO CURRENT ADMIRALTY ISSUES

I. REMOVAL ISSUES

A. ADMIRALTY JURISDICTION AND THE SAVING-TO-SUITORS CLAUSE

The Constitution extends the judicial power to “all Cases of admiralty and maritime Jurisdiction:”

The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. . . .¹

The first Congress then conferred admiralty jurisdiction on the federal judiciary in the Judiciary Act of 1789:

That the district courts . . . shall also have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation or trade of the United States, where the seizures are made, on waters which are navigable from the sea by vessels of ten or more tons burthen, within their respective districts as well as upon the high seas; saving to suitors, in all cases,

¹ U.S. CONST. art III, § 2.

the right of a common law remedy, where the common law is competent to give it²

The Act also provided: “And the trial of issues in fact, in the district courts, in all causes except civil causes of admiralty and maritime jurisdiction, shall be by jury.”³ The day after Congress passed the Judiciary Act of 1789, it agreed upon a Bill of Rights, which included the Seventh Amendment:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rule of the common law.⁴

Chief Justice Marshall and Justice Story discussed the relationship between the grants of authority over admiralty and maritime jurisdiction by the Constitution and Judiciary Act in *American Insurance Co. v. 356 Bales of Cotton*⁵ and *Martin v. Hunter’s Lessee*.⁶ In *American Insurance*, a dispute

² Act of Sept. 24, 1789, Ch. 20, §9, 1 Stat. 73, 76-77 (1789). That enactment is codified in 28 U.S.C. § 1333, which currently provides:

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

- (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.
- (2) Any prize brought into the United States and all proceedings for the condemnation or property taken as prize.

³ Act of Sept. 24, 1789, *supra* note 2, § 9, at 77.

⁴ U.S. CONST. amend. VII.

⁵ 26 U.S. (1 Pet.) 511 (1828).

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: Judicial Insights into Current Admiralty Issues

Also available as part of the eCourse

[Recent Developments in Admiralty and Maritime Law, Judicial Insights, and Cases in State Court; plus What to Do if Your Client is Misbehaving, Part VI](#)

First appeared as part of the conference materials for the
25th Annual Admiralty and Maritime Law Conference session
"Judicial Insights into Admiralty Practice"