

PRESENTED AT

27th Annual Admiralty and Maritime Law Conference

September 21, 2018

Houston, TX

**Recent Developments in Admiralty and Maritime
Law at the National Level and in the Fifth and
Eleventh Circuits**

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

<u>I. INTRODUCTION</u>	1
<u>II. THE WORK OF THE SUPREME COURT</u>	3
A. Nonmaritime Decision: Administrative Law Judges	3
<i>Lucia v. Securities and Exchange Commission</i>	
<i>Jones Brothers, Inc. v. Secretary of Labor</i>	
<i>Kabani & Co. v. United States SEC</i>	
B. Pending General Maritime Tort Law Case	9
<i>Air and Liquid Systems Corp. v. DeVries</i>	
C. Petitions for Certiorari	10
<i>Dutra Group v. Batterton</i>	
<i>Citgo Asphalt Refining Co. v. Frescati Shipping Co.</i>	
D. Denials of Certiorari	12
<i>Touchet v. Estis Well Service, L.L.C.</i>	
<i>American Triumph LLC v. Tabingo</i>	
<u>III. SELECTED DECISIONS FROM AROUND THE COUNTRY</u>	13
A. Admiralty Jurisdiction in Tort	13
<i>In re Christopher Columbus, LLC</i>	
B. The Rights of Seamen	14
1. Seaman Status	14
<i>Tilcon N.Y., Inc. v. Volk</i>	
<i>(In re Complaint of Buchanan Marine, L.P.)</i>	
<i>Gibson v. American Construction Co.</i>	
2. Maintenance and Cure: Maintenance Rates Under Collective Bargaining Agreements	17
<i>Joyce v. Maersk Line Ltd.</i>	
3. Punitive Damages in Unseaworthiness Actions	18
<i>Batterton v. Dutra Group</i>	
C. General Maritime Tort Law	18
1. Asbestos Litigation	18
<i>In re Asbestos Products Liability Litigation (No. VI)</i>	
<i>Air and Liquid Systems Corp. v. DeVries</i>	

2. <i>Res ipsa loquitur</i>	19
<i>In re Manhattan by Sail, Inc.</i>	
<i>Manhattan by Sail, Inc. v. Tagle</i>	
3. Damages	20
<i>Sawyer Bros., Inc. v. Island Transporter, LLC,</i>	
D. Carriage of Goods	22
1. The Fair Opportunity Doctrine	22
<i>Nabolle v. United Arab Agencies, Inc.</i>	
<i>Krystal Inc. v. China United Transport, Inc.</i>	
2. The COGSA § 4(5) Package Definition and Customary Freight Units	22
<i>Nabolle v. United Arab Agencies Inc.</i>	
<i>Mapfre Atlas Compania de Seguros SA v. M/V Loa</i>	
3. Continued Validity of COGSA	23
<i>Liberty Woods International, Inc. v. M/V Ocean Quartz</i>	
4. <i>Forum Non Conveniens</i> and Forum Selection Clauses in Bills of Lading	24
<i>Liberty Woods International, Inc. v. M/V Ocean Quartz</i>	
<i>Hamburg-Sud North America, Inc. v. Bomix Industria de Embalagens Ltda.</i>	
<i>Herod's Stone Design v. Mediterranean Shipping Co.</i>	
5. The COGSA § 3(6) Time-for-Suit Provision	26
<i>United Perfume Inc. v. Evergreen Marine Corp. (Taiwan) Ltd.</i>	
E. Marine Insurance	26
<i>Galilea, LLC v. AGCS Marine Insurance Co.</i>	
<i>Maclean v. Travelers Insurance Co.</i>	
F. Longshore and Harbor Workers' Compensation Act (LHWCA)	27
<i>Sickle v. Torres Advanced Enterprise Solutions, LLC</i>	
<i>Moody v. Huntington Ingalls Inc.</i>	
<i>Christie v. Georgia-Pacific Co.</i>	
<i>Ahmed v. Western Ports Transportation, Inc.</i>	
G. Maritime Liens	31
1. Bunker Fuel Cases	32
<i>ING Bank N.V. v. M/V Temara</i>	
<i>Chemoil Adani Pvt. Ltd. v. M/V Maritime King</i>	
<i>Leopard Marine & Trading, Ltd. v. Easy Street Ltd.</i>	

2. Other Cases	34
<i>Portland Pilots, Inc. v. Nova Star M/V</i>	
<i>Cahuenga Associates II v. S/V Mako</i>	
<i>Dampskibsselskabet Norden A/S v. 25,001.078 Metric Tons of Fly Ash</i>	
H. Collision	35
<i>United States v. CITGO Asphalt Refining Co. (In re Frescati Shipping Co. II)</i>	
I. Salvage	36
<i>Odyssey Marine Exploration, Inc. v. Shipwrecked & Abandoned SS Mantola</i>	
J. Outer Continental Shelf Lands Act	38
<i>Newton v. Parker Drilling Management Services</i>	
K. Procedure: Interlocutory Appeals under 28 U.S.C. § 1292(a)(3)	40
<i>Buccina v. Grimsby</i>	
L. Removal	41
<i>Andreu v. Palmas del Mar Homeowners Association, Inc.</i>	
M. The Oil Pollution Act of 1990	42
<i>Ironshore Specialty Insurance Co. v. United States</i>	
<u>IV. THE WORK OF THE COURTS IN THE FIFTH AND ELEVENTH CIRCUITS</u>	43
A. Admiralty Jurisdiction in Contract Cases	43
<i>In re Larry Doiron, Inc.</i>	
<i>In re Crescent Energy Services, L.L.C.</i>	
B. The Rights of Seamen	44
1. Seaman Status	44
a. Vessel Status	44
<i>Partin v. Superior Energy Services</i>	
b. Fleet Rule	47
<i>Costanza v. Accutrans, Inc.</i>	
<i>Young v. T.T. Barge Services Mile 237, LLC</i>	
<i>Tsuhlares v. Adriatic Marine, LLC</i>	
2. Maintenance and Cure: <i>McCorpen</i>	50
<i>Jackson v. NCL America, LLC</i>	
<i>Thomas v. Hercules Offshore, Inc.</i>	
3. Jones Act and Unseaworthiness Litigation: Fatal Injury Damages	51
<i>In re Magnolia Fleet, L.L.C.</i>	
4. Coast Guard Regulation	52
<i>Thomas v. Hercules Offshore Services, L.L.C.</i>	

C. General Maritime Tort Law	53
1. Punitive Damages	53
<i>Warren v. Shelter Mutual Insurance Co.</i>	
2. DOHSA coverage	54
<i>Kipp v. Amy Slate’s Amoray Dive Center, Inc.</i>	
D. Carriage of Goods	56
1. Negligent Third Parties and Himalaya Clauses	56
<i>Royal SMIT Transformers BV v. HC Bea-Luna M/V</i>	
<i>Global Oil Tools, Inc. v. Expeditors International of Washington, Inc.</i>	
<i>Davis v. Valsamis, Inc.</i>	
2. Freedom of Contract	59
<i>Advanced Seismic Technology, Inc. v. M/V Fortitude</i>	
3. <i>Forum Non Conveniens</i> and Forum Selection Clauses in Bills of Lading	59
<i>Caddell Construction Co. (DE), LLC v. Danmar Lines, Ltd.</i>	
4. Carriers’ Actions Against Cargo Interests	60
<i>A.P. Moller-Maersk A/S v. Safewater Lines (1) Pvt., Ltd.</i>	
E. Marine Insurance	60
1. The Scope of a Hull and Machinery Policy	60
<i>Continental Insurance Co. v. L&L Marine Transportation, Inc.</i>	
2. Policy Exclusions	61
<i>StarNet Insurance Co. v. LA Marine Service LLC</i>	
<i>Kol B’Seder, Inc. v. Certain Underwriters at Lloyd’s of London</i>	
3. <i>Wilburn Boat</i>	62
<i>Continental Insurance Co. v. L&L Marine Transportation, Inc.</i>	
<i>Kol B’Seder, Inc. v. Certain Underwriters at Lloyd’s of London</i>	
<i>StarNet Insurance Co. v. LA Marine Service LLC</i>	
F. Longshore and Harbor Workers’ Compensation Act (LHWCA)	62
1. Negligence Actions Under LHWCA § 5(b) — The “Turnover” Duty	62
<i>Manson Gulf, L.L.C. v. Modern American Recycling Service, Inc.</i>	
2. Administrative Cases	65
<i>Ports America Louisiana, Inc. v. Director, OWCP [Scott]</i>	
<i>Walton v. Guidry</i>	

G. Maritime Liens	67
1. Bunker-Fuel Cases	67
<i>Valero Marketing & Supply Co. v. M/V Almi Sun</i>	
<i>Barcliff, LLC v. M/V Deep Blue</i>	
<i>World Fuel Services Singapore Pte. Ltd. v. M/V As Varesia</i>	
2. General Maritime Law Tort Liens	70
<i>Minott v. M/V Brunello</i>	
H. Collision	71
<i>In re Marquette Transportation Co., LLC</i>	
I. Procedure: Interlocutory Appeals under 28 U.S.C. § 1292(a)(3)	73
<i>SCF Waxler Marine, L.L.C. v. Aris T M/V</i>	
<i>Minott v. M/V Brunello</i>	
J. Removal	74
<i>Boakye v. NCL (Bahamas) Ltd.</i>	
K. The Oil Pollution Act of 1990	76
<i>United States v. American Commercial Lines, L.L.C.</i>	
L. Miscellaneous	79
<i>Diamond Offshore Services, Ltd. v. Williams</i>	
M. The BP Gulf Oil Spill Litigation	81
<i>In re Deepwater Horizon: Tobatex, Inc. v. BP Products North America</i>	

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

David W. Robertson
William Powers, Jr. and Kim L. Heilbrun Chair in Tort Law
University Distinguished Teaching Professor
University of Texas
727 East Dean Keeton Street, Austin, Texas 78705
512/232-1339; Fax 512/471-6988
drobertson@law.utexas.edu

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 1, 2018

I. INTRODUCTION

This is the eighteenth 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 seventeen papers are 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*

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

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 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.*

II. THE WORK OF THE SUPREME COURT

Although the Supreme Court did not hand down any landmark maritime decisions last year, it nevertheless announced some nonmaritime decisions that will be important to maritime lawyers. And important maritime issues are in the pipeline.

A. Nonmaritime Decision: Administrative Law Judges

Claims by injured workers under the Longshore & Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. § 901, *et. seq.*, are tried at "formal hearings" before federal administrative law judges (ALJs).³ The LHWCA provides that ALJs are to be appointed by the U.S. Department of Labor (DOL).⁴ They work within the DOL's U.S. Office of Administrative Law Judges. The DOL has the third largest ALJ office in the federal government, "with some 41 judges and 130 staff in eight district offices located across the United States. . . ."⁵ The bulk of the DOL ALJs' workload is hearing claims brought under the Black Lung Act and the LHWCA and its extensions.⁶

The validity of those ALJs' decisions was recently put in jeopardy. The Supreme Court in *Lucia v. Securities and Exchange Commission*⁷ decided that an ALJ for the SEC was not validly appointed as required by the Appointments Clause of the Constitution.⁸

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 of the same court.").

³ 33 U.S.C. § 919(d) (" . . . any hearing held under this Act shall be conducted in accordance with the provisions of [5 U.S.C. § 554]. Any such hearing shall be conducted by a [an] administrative law judge ***qualified under section 3105 of that title [5 U.S.C. § 3105]***. All powers, duties, and responsibilities vested by this Act, on the date of enactment of the Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972 [enacted Oct. 27, 1972], in the deputy commissioners with respect to such hearings shall be vested in such administrative law judges.") (emphasis added).

⁴ *Id.*; see 5 U.S.C. § 3105.

⁵ <https://www.oalj.dol.gov/ALJMISSN.HTM> (viewed 8/6/2018).

⁶ *Id.*

⁷ 138 S. Ct. 2044 (2018).

⁸ U.S. CONST. art. II, § 2, cl. 2. The *Lucia* case has arisen in Special Counsel Robert Mueller's investigation by a witness resisting a subpoena who claimed Mr. Mueller's appointment was unconstitutional; the U.S. District Court for the District of Columbia rejected that challenge. *In re Grand Jury Investigation*, 2018 U.S. Dist. LEXIS 134601 at *301 (D.D.C. August 8, 2018) (appeal filed August 14, 2018).

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

Also available as part of the eCourse

[2018 Admiralty and Maritime Law eConference](#)

First appeared as part of the conference materials for the
27th Annual Admiralty and Maritime Law Conference session

"Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits"