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**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

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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](mailto: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](mailto: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](mailto:mha@MaritimeDefense.net)

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**I. INTRODUCTION**

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

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<sup>1</sup> 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.<sup>2</sup>

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*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*].

<sup>2</sup> 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).<sup>3</sup> The LHWCA provides that ALJs are to be appointed by the U.S. Department of Labor (DOL).<sup>4</sup> 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. . . ."<sup>5</sup> The bulk of the DOL ALJs' workload is hearing claims brought under the Black Lung Act and the LHWCA and its extensions.<sup>6</sup>

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

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*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.").

<sup>3</sup> 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).

<sup>4</sup> *Id.*; see 5 U.S.C. § 3105.

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

<sup>6</sup> *Id.*

<sup>7</sup> 138 S. Ct. 2044 (2018).

<sup>8</sup> 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).

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