

PRESENTED AT

The University of Texas School of Law
28th Annual David W. Robertson
Admiralty and Maritime Law Conference

November 22, 2019
South Texas College of Law, 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. INTRODUCTION	1
II. THE WORK OF THE SUPREME COURT	3
A. Asbestos	3
<i>Air and Liquid Systems Corp. v. DeVries</i>	
B. Punitive Damages	4
<i>Dutra Group v. Batterton</i>	
C. The Outer Continental Shelf Lands Act (OCSLA)	10
<i>Parker Drilling Management Services, Ltd. v. Newton</i>	
D. Sovereign Immunity	14
<i>Thacker v. Tennessee Valley Authority</i>	
E. Pending Charterparty Case	15
<i>Citgo Asphalt Refining Co. v. Frescati Shipping Co.</i>	
F. Denials of Certiorari	15
<i>Liberty Mutual Insurance Co. v. Carrizo Oil & Gas, Inc.</i>	
<i>Davis v. Valsamis, Inc.</i>	
III. SELECTED DECISIONS FROM AROUND THE COUNTRY	16
A. Subject-Matter Jurisdiction in Maritime Cases	16
1. Admiralty Jurisdiction in Contract Cases	16
<i>Dimond Rigging Co., LLC v. BDP International, Inc.</i>	
<i>National Union Fire Insurance Company of Pittsburgh, PA. v. Garpo Marine Services, Inc.</i>	
2. Admiralty Jurisdiction in Tort Cases	17
<i>Adamson v. Port of Bellingham</i>	
<i>Walker v. Blackmer Pump Co.</i>	
B. The Rights of Seamen	19
<i>Castro v. Tri Marine Fish Company, LLC</i>	
C. Carriage of Goods	22
1. The COGSA § 4(5) Package Definition and Customary Freight Units	22
<i>Bristow US LLC v. Wallenius Wilhelmsen Logistics, AS</i>	
2. Identifying the Governing Law	23
<i>Caddell Construction Co. (DE), LLC v. Danmar Lines, Ltd.</i>	

3. Time-for-Suit Provisions	23
<i>Dimond Rigging Co., LLC v. BDP International, Inc.</i>	
<i>Vesuvius USA Corp. v. American Commercial Lines LLC</i>	
D. Marine Insurance	24
<i>Starr Indemnity & Liability Co. v. Water Quality Insurance Syndicate</i>	
E. Longshore and Harbor Workers' Compensation Act (LHWCA)	25
<i>Muhammad v. Norfolk Southern Railway Co.</i>	
<i>Grimm v. Vortex Marine Construction</i>	
<i>Cruz v. National Steel & Shipbuilding Co.</i>	
<i>Pena-Garcia v. Director, OWCP</i>	
F. Maritime Liens	32
1. Bunker-Fuel Cases	32
<i>Clearlake Shipping Pte Ltd. v. NuStar Energy Services, Inc.</i>	
<i>Nippon Kaisha Line Ltd. v. Nustar Energy Services, Inc.</i>	
<i>U.S. Oil Trading LLC v. M/V Vienna Express</i>	
<i>Praxis Energy Agents Pte Ltd v. M/V Pebble Beach</i>	
2. General Maritime Law Tort Liens	35
<i>Barnes v. Sea Hawaii Rafting, LLC (2018)</i>	
<i>Barnes v. Sea Hawaii Rafting, LLC (2019)</i>	
G. Collision	36
<i>Dakota, Minnesota & Eastern Railroad Corp. v. Ingram Barge Co.</i>	
H. Vessel Owner's Limitation of Liability	38
<i>In re Williams Sports Rentals Inc. [Williams II]</i>	
I. The Oil Pollution Act of 1990	40
<i>Power Authority of New York v. Tug M/V Ellen S. Bouchard</i>	
<u>IV. THE WORK OF THE COURTS IN THE FIFTH AND ELEVENTH CIRCUITS</u>	42
A. Subject-Matter Jurisdiction in Maritime Cases	42
1. Diversity Jurisdiction	42
<i>Caron v. NCL (Bahamas), Ltd.</i>	
2. Admiralty Jurisdiction in Tort Cases	43
<i>Caron v. NCL (Bahamas), Ltd.</i>	
B. Personal Jurisdiction	43
<i>Carmona v. Leo Ship Management</i>	

C. The Rights of Seamen	45
1. Seaman Status	45
a. Vessel Status	45
<i>Superior Energy Services v. Partin</i>	
b. The 30% Guideline	46
<i>Lee v. Nacher Corp.</i>	
<i>Barrios v. Centaur, LLC</i>	
c. The Change-of-Assignment Rule	49
<i>Ross v. W&T Offshore, Inc.</i>	
d. The “Nature” Requirement	49
<i>Sanchez v. Enterprise Offshore Drilling LLC</i>	
2. Maintenance and Cure	51
<i>Randle v. Crosby Tugs, L.L.C.</i>	
<i>In re 4-K Marine, L.L.C. v. Enterprise Marine Services, L.L.C.</i>	
3. Jones Act and Unseaworthiness Litigation	54
<i>Gowdy v. Marine Spill Response Corp.</i>	
<i>Jones v. United States</i>	
<i>Dean v. Sea Supply, Inc.</i>	
<i>Nazareth v. McDermott International, Inc.</i>	
D. General Maritime Contract Law	60
<i>Eni US Operating Co., Inc. v. Transocean Offshore Deepwater Drilling, Inc.</i>	
E. General Maritime Tort Law	61
<i>K.T. v. Royal Caribbean Cruises, Ltd.</i>	
<i>Sutton v. Royal Caribbean Cruises, Ltd.</i>	
F. Carriage of Goods	64
1. The COGSA § 4(5) Package Definition	64
<i>Global Oil Tools, Inc. v. Expeditors International of Washington, Inc.</i>	
2. The Fair Opportunity Requirement	65
<i>Global Oil Tools, Inc. v. Expeditors International of Washington, Inc.</i>	
3. <i>Forum Non Conveniens</i> and Forum Selection Clauses in Bills of Lading	65
<i>Global Oil Tools, Inc. v. Expeditors International of Washington, Inc.</i>	

4. Carriers' Actions Against Cargo Interests	68
<i>A.P. Moller - Maersk A/S v. Safewater Lines (I) Pvt., Ltd.</i>	
G. Marine Insurance	68
1. Additional Insurance and Waiver of Subrogation	68
<i>Lloyd's Syndicate 457 v. FloaTEC, L.L.C. (5th Cir.)</i>	
<i>Lloyd's Syndicate 457 v. FloaTEC, L.L.C. (S.D. Tex.)</i>	
2. <i>Wilburn Boat</i>	70
<i>Travelers Property Casualty Co. of America v.</i>	
<i>Ocean Reef Charters, LLC</i>	
3. Coverage of Attorney's Fees and Other Defense Costs	71
<i>Anadarko Petroleum Corp. v. Houston Casualty Co.</i>	
H. Longshore and Harbor Workers' Compensation Act (LHWCA)	72
1. Statutory Coverage of the LHWCA	72
<i>Wood Group Production Services v. Director, OWCP [Malta]</i>	
<i>Williams v. Director, OWCP</i>	
2. The Outer Continental Shelf Lands Act (OCSLA) Extension of LHWCA	77
<i>Mays v. Chevron Pipe Line Co.</i>	
<i>Gantt v. Seadrill Americas, Inc.</i>	
3. Negligence Actions Under LHWCA § 5(b)	81
<i>Manson Gulf, L.L.C. v. LaFleur</i>	
I. Maritime Liens	82
<i>NuStar Energy Services, Inc. v. M/V COSCO Auckland</i>	
J. Salvage	83
<i>Jupiter Wreck, Inc. v. Unidentified Wrecked & Abandoned</i>	
<i>Sailing Vessel</i>	
K. Vessel Owner's Limitation of Liability	84
<i>Shell Offshore, Inc. v. Tesla Offshore, LLC</i>	
<i>Orion Marine Construction, Inc. v. Carroll</i>	
<i>In re: Brown</i>	
L. Appellate Procedure	89
1. Appellate Standing	89
<i>NuStar Energy Services, Inc. v. M/V COSCO Auckland</i>	

2. The Rule of Orderliness	90
<i>Eni US Operating Co., Inc. v. Transocean Offshore Deepwater Drilling, Inc.</i>	
M. Removal	90
<i>Sanchez v. Enterprise Offshore Drilling LLC</i>	
N. The Oil Pollution Act of 1990	92
<i>United States v. Nature's Way Marine, L.L.C.</i>	
O. The BP Gulf Oil Spill Litigation	93
<i>Lake Eugenie Land & Development, Inc. v. Halliburton Energy Services, Inc. (In re Deepwater Horizon)</i>	
<i>Claimant ID 100081155 v. BP Exploration & Production</i>	
<i>BP Exploration & Production v. Claimant ID 100094497</i>	
<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 1, 2019

I. INTRODUCTION

This is the nineteenth 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 eighteen 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*, 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*, 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*,

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

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. 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.”).

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 \(utcle.org/elibrary\)](https://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

[2019 David W. Robertson Admiralty and Maritime Law eConference](#)

First appeared as part of the conference materials for the
28th 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"