

PRESENTED AT

The University of Texas School of Law
31st Annual David W. Robertson
Admiralty and Maritime Law Conference

October 14, 2022
South Texas College of Law Houston ■ 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

<u>I. INTRODUCTION</u>	1
<u>II. THE WORK OF THE SUPREME COURT</u>	3
A. Discovery in Aid of Overseas Arbitration	3
<i>ZF Automotive US, Inc. v. Luxshare, Ltd.</i>	
<i>AlixPartners, LLP v. Fund for Protection of Investors' Rights in Foreign States</i>	
B. Federal Jurisdiction to Confirm, Vacate, or Modify an Arbitration Award	5
<i>Badgerow v. Walters</i>	
C. The Standard for Finding a Waiver of the Right to Compel Arbitration	7
<i>Morgan v. Sundance, Inc.</i>	
D. Exceptions to the Federal Arbitration Act	9
<i>Southwest Airlines v. Saxon</i>	
E. FAA Preemption	10
<i>Viking River Cruises v. Moriana</i>	
F. The Federal Employers Liability Act (FELA)	11
<i>LeDure v. Union Pacific Railroad Co.</i>	
G. Grants of Certiorari	12
<i>Helix Energy Solutions Group, Inc. v. Hewitt</i>	
<i>Sackett v. Environmental Protection Agency</i>	
H. Denials of Certiorari	13
<i>Lil Man in the Boat, Inc. v. City and County of San Francisco</i>	
<i>Carswell v. E. Pihl & Son</i>	
<i>Cedado Nuñez v. United States</i>	
<i>Red Hook Container Terminal LLC v. South Pacific Shipping Co. Ltd.</i>	
<i>Dahiya v. Neptune Shipmanagement</i>	

III. SELECTED DECISIONS FROM AROUND THE COUNTRY	15
A. Subject-Matter Jurisdiction in Maritime Cases	15
1. Admiralty Jurisdiction in Tort Cases	15
a. The <i>Grubart</i> test	15
<i>In re Epic Cruises, Inc.</i>	
<i>In re Talbott</i>	
<i>Waterfront Petroleum Terminal Co. v. Detroit Bulk Storage, Inc.</i>	
<i>Gay v. A.O. Smith Corp.</i>	
<i>Shelton v. Air & Liquid Systems Corp</i>	
<i>In re White</i>	
<i>Cargo Logistics International, LLC v. Overseas Moving Specialists, Inc.</i>	
<i>Maerov v. Long Island Airline, LLC</i>	
b. The “navigable water” definition	19
<i>DeLagarde v. Tours VI Ltd.</i>	
<i>Montana v. Talen Montana, LLC</i>	
2. Admiralty Jurisdiction in Contract Cases	21
<i>J-Way Southern, Inc. v. United States Army Corps of Engineers</i>	
<i>Nederland Shipping Corp. v. United States</i>	
<i>Cargo Logistics International, LLC v. Overseas Moving Specialists, Inc.</i>	
B. The Rights of Seamen	23
1. Seaman Status Under the Jones Act	23
<i>Jarvis v. Hines Furlong Line, Inc</i>	
2. Maintenance and Cure	25
<i>Aadland v. Boat Santa Rita II, Inc</i>	
<i>Stemmle v. Interlake S.S. Co</i>	
3. Settlement Agreements	31
<i>Williams v. Inflection Energy, LLC</i>	
4. Punitive Damages	32
<i>Elorreaga v. Rockwell Automation, Inc</i>	

C. Carriage of Goods	32
1. Forum-Selection Clauses	32
<i>In re Hapag-Lloyd Aktiengesellschaft</i>	
2. Due Diligence and Navigational Fault	34
<i>Alize 1954 v. Allianz Elementar Versicherungs AG (The “CMA CGM Libra”)</i>	
3. Time-for-Suit Provisions	34
<i>Ebomwonyi v. Sea Shipping Line</i>	
D. Marine Insurance	35
1. Choice-of-Law Clauses	35
<i>Great Lakes Insurance SE v. Andersson</i>	
<i>United States Fire Insurance Company v. Icicle Seafoods, Inc.</i>	
2. The <i>Uberrimae Fidei</i> (Utmost Good Faith) Doctrine	36
<i>Acadia Insurance Co. v. Hansen</i>	
E. Collisions	37
<i>In re Energetic Tank, Inc.</i>	
F. Suits in Admiralty Act	38
<i>Farhat v. United States</i>	
<i>Martz v. Horazdovsky</i>	
<i>In re Bonvillian Marine Service, Inc.</i>	
G. Vessel Owner’s Limitation of Liability	40
<i>Martz v. Horazdovsky</i>	
<i>Roen Salvage Co. v. Sarter</i>	
H. Maritime Liens	43
<i>London Arbitration 28/22</i>	
<i>Sing Fuels Pte Ltd. v. M/V Lila Shanghai</i>	
I. General Maritime Tort Law	47
<i>Deem v. William Powell Co</i>	
J. Contribution and Indemnity	49
<i>In re Liquid Waste Technology, LLC</i>	

K. Procedure	50
1. Removal	50
a. Removal of the Climate Change Cases	50
<i>Mayor & City Council of Baltimore v. BP P.L.C.</i>	
<i>County of San Mateo v. Chevron Corp.</i>	
<i>City of Hoboken v. Chevron Corp.</i>	
b. Removal into admiralty	52
<i>Cox v. Lippus</i>	
2. Forum Non Conveniens	54
<i>Curtis v. Galakatos</i>	
L. Criminal Law	54
<i>United States v. Dávila-Reyes</i>	
<i>United States v. Vastardis</i>	
<u>IV. THE WORK OF THE COURTS IN THE FIFTH AND ELEVENTH</u>	
<u>CIRCUITS</u>	56
A. Jurisdiction in Maritime Cases	56
1. Admiralty Jurisdiction in Tort Cases	56
<i>Dupre v. Palfinger Marine USA Inc.</i>	
<i>Williams v. Carnival Corp.</i>	
<i>Atlantic Specialty Insurance Co. v. Caterpillar Inc.</i>	
2. Admiralty Jurisdiction in Contract Cases	58
<i>Grupo HGM Tecnologias Submarina, S.A. v. Energy Subsea, LLC</i>	
<i>Earnest v. Palfinger Marine USA Inc.</i>	
3. Personal Jurisdiction	60
a. Personal Jurisdiction and Fifth Amendment Due Process	60
<i>Douglass v. Nippon Yusen Kabushiki Kaisha</i>	
b. Personal Jurisdiction in an Action to Confirm an Arbitration Award	62
<i>Conti 11. Container Schiffarts-GMBH & Co. KG M.S. “MSC Flamina” v. MSC Mediterranean Shipping Co. S.A.</i>	

B. The Rights of Seamen	64
1. Seaman Status	64
a. Seaman Status Under the Jones Act	64
<i>Meaux v. Cooper Consolidated, LLC</i>	
<i>Blanda v. Cooper/T. Smith Corp</i>	
<i>Johnson v. Cooper T. Smith Stevedoring Co</i>	
<i>Bommarito v. Belle Chasse Marine Transportation, LLC</i>	
<i>Perez v. Aquaterra Contracting, LLC</i>	
<i>Barlow v. BP Exploration & Production, Inc</i>	
b. Seaman Status Under the Fair Labor Standards Act	73
<i>Adams v. All Coast, L.L.C.</i>	
<i>McKnight v. Helix Energy Solutions Group, Inc.</i>	
<i>Helix Energy Solutions Group, Inc. v. Hewitt</i>	
c. Seaman Status Under the Seaman’s Protection Act	76
<i>Gummala v. U.S. Department of Labor</i>	
2. Right to Jury Trial	77
<i>Herrera v. 7R Charter Ltd</i>	
3. Maintenance and Cure	78
a. Willful Rejection of Cure	78
<i>Vizinat v. Dupre Marine Transportation, LLC</i>	
b. McCorpen defense	78
<i>Savoie v. Inland Dredging Co</i>	
<i>In re Adriatic Marine, LLC</i>	
<i>In re Mike Hooks LLC</i>	
c. Punitive Damages for Failure to Pay Maintenance and Cure	80
<i>Moran v. Signet Maritime Corp</i>	
4. Jones Act and Unseaworthiness Litigation	82
a. Fraud Counterclaim Against Seaman	82
<i>Ingram Barge Co., LLC v. Caillou Island Towing Co</i>	

b. Comparative Fault	84
<i>Taylor v. B&J Martin, Inc</i>	
c. Proportionate Responsibility	84
<i>Hutchins v. Anco Insulations, Inc</i>	
d. Jones Act Negligence	86
<i>Underwood v. Parker Towing Co</i>	
<i>Simon v. Bertucci Contracting Co., LLC</i>	
e. Foreign Seamen	88
<i>Diamond Offshore Drilling, Inc. v. Black</i>	
C. Carriage of Goods	91
1. Forum-Selection Clauses	91
<i>BBC Chartering Carriers GmbH & Co. KG v. Fluence Energy, LLC</i>	
2. Attorney's Fees	92
<i>Ocean Network Express (North America), Inc. v. Pacific Lumber Resources, Inc.</i>	
D. General Maritime Tort Law	93
1. Recovery for Pure Emotional Injuries	93
<i>SCF Waxler Marine, L.L.C. v. M/V Aris T</i>	
2. Duty Element of Negligence: Cruise Ship Cases	94
<i>Newbauer v. Carnival Corporation,</i>	
<i>Fuentes v. Classica Cruise Operator Ltd</i>	
3. The Pennsylvania Rule in Personal Injury Cases	97
<i>In re Hanson Marine Properties, Inc</i>	
4. The Robins Dry Dock Rule	99
<i>XL Insurance America, Inc. v. Turn Services, L.L.C.</i>	
5. Punitive Damages	100
<i>Gonzalez v. Sea Fox Boat Co</i>	

E. Contracts	101
1. Warranty of Workmanlike Performance	101
<i>In re Pack</i>	
<i>Kenai Ironclad Corp. v. CP Marine Services, LLC</i>	
<i>Goodloe Marine, Inc. v. Caillou Island Towing Co.</i>	
2. Basic Principles	104
<i>Silk Road Trading & Shipping Co., Ltd. v. World Fuel Services Corp.</i>	
<i>Great American Insurance Co. v. Mueller</i>	
F. Marine Insurance	105
1. Choice-of-Law Clauses	105
<i>Great Lakes Insurance SE v. Wave Cruiser LLC</i>	
<i>Great Lakes Insurance SE v. Lassiter</i>	
<i>Clear Spring Property & Casualty Co. v. Viking Power LLC</i>	
2. Construction of Policy Clauses	108
<i>Barrios v. River Ventures, L.L.C.</i>	
G. Longshore and Harbor Workers' Compensation Act (LHWCA)	109
1. Employer's Exclusivity of Liability Under LHWCA § 5(a)	109
<i>Cortez v. Lamorak Insurance Co</i>	
<i>Hotard v. Avondale Industries</i>	
<i>Becnel v. Lamorak Insurance Co</i>	
<i>Sentilles v. Huntington Ingalls Inc</i>	
2. Statutory Coverage of the LHWCA	111
<i>In re Brizo, LLC</i>	
3. The Defense Base Act Extension of LHWCA	113
<i>Cloyd v. KBR, Inc.</i>	
4. Aggravation Rule under LHWCA	114
<i>Guidry v. Director, OWCP</i>	
5. Claimant's Attorneys' Fees Entitlement under LHWCA	115
<i>Rivera v. Dir., OWCP [Rivera]</i>	

6. Vessel Negligence Actions through LHWCA § 5(b)	118
<i>Kiwia v. Bulkship Management, A.S</i>	
<i>In re Brizo, LLC</i>	
7. Punitive Damages	122
<i>Bommarito v. Belle Chasse Marine Transportation, LLC</i>	
H. Collisions	123
1. The <i>Oregon</i> and <i>Pennsylvania</i> Rules	123
<i>Hersh v. United States</i>	
2. The Liability of a Time Charterer	124
<i>Grand Famous Shipping Ltd. v. China Navigation Company Pte., Ltd.</i>	
3. Allocation of Liability	125
<i>SCF Waxler Marine, L.L.C. v. Aris T M/V</i>	
I. Maritime Liens	126
<i>Central Boat Rentals, Inc. v. M/V Nor Goliath</i>	
J. Vessel Owner's Limitation of Liability	126
<i>In re N&W Marine Towing, L.L.C</i>	
<i>In re Bonvillian Marine Service, Inc</i>	
<i>SCF Waxler Marine, L.L.C. v. Aris T M/V</i>	
<i>OHT Hawk AS v. Offshore Heavy Transport AS</i>	
<i>Martinez v. Reynolds</i>	
K. Procedure	136
1. Appellate Jurisdiction	136
<i>Barham v. Royal Caribbean Cruises, Ltd.</i>	
<i>Ballard v. Hilcorp Energy Co.</i>	
<i>Martinez v. MSC Cruises S.A.</i>	
2. Removal	138
a. Federal Officer Removal	138
<i>Cloyd v. KBR, Inc.</i>	
b. Removal of an <i>In Rem</i> Claim	139
<i>Finney v. Board of Commissioners of the Port of New Orleans</i>	

c. Snap Removal	139
<i>Chastain v. New Orleans Paddlewheels, Inc.</i>	
3. Rule B	140
<i>K Investments, Inc. v. B-Gas Limited</i>	
4. Political Abstention	141
<i>Preston v. M1 Support Servs., L.P.</i>	
L. Oil Pollution Act of 1990	142
<i>Loggerhead Holdings, Inc. v. BP, P.L.C.</i>	
<i>Savage Services Corp. v. United States</i>	
M. Criminal Law	148
<i>United States v. Pierre</i>	
N. Outer Continental Shelf Lands Act (OCSLA)	149
<i>Coleman v. BP Exploration & Production, Inc.</i>	
O. The BP Gulf Oil Spill Litigation	152
<i>Moore v. BP Exploration & Production, Inc.</i>	
<i>Griffin v. BP Exploration & Production, Inc.</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 15, 2022

I. INTRODUCTION

This is the twenty-second 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 significant national-

¹ The preceding twenty-one papers are Michael F. Sturley & Matthew H. Ammerman, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 46 TUL. MAR. L.J. 531 (2022) [hereinafter *2021 Recent Developments*]; Michael F. Sturley & Matthew H. Ammerman, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 45 TUL. MAR. L.J. 549 (2021) [hereinafter *2020 Recent Developments*]; Michael F. Sturley & Matthew H. Ammerman, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 44 TUL. MAR. L.J. 513 (2020) [hereinafter *2019 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*, 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*

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 more thorough.²

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*, 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 many 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

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

[2022 David W. Robertson Admiralty and Maritime Law eConference](#)

First appeared as part of the conference materials for the

31st 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"