

**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](mailto:msturley@law.utexas.edu)  
512-232-1350

Matthew H. Ammerman  
LAW OFFICE OF MATTHEW H. AMMERMAN,  
P.C.  
[mha@MaritimeDefense.net](mailto:mha@MaritimeDefense.net)  
713-227-1404

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

<b><u>I. INTRODUCTION</u></b>	1
<b><u>II. THE WORK OF THE SUPREME COURT</u></b>	3
<b>A. Discovery in Aid of Overseas Arbitration</b>	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>B. Federal Jurisdiction to Confirm, Vacate, or Modify an Arbitration Award</b>	5
<i>Badgerow v. Walters</i>	
<b>C. The Standard for Finding a Waiver of the Right to Compel Arbitration</b>	7
<i>Morgan v. Sundance, Inc.</i>	
<b>D. Exceptions to the Federal Arbitration Act</b>	9
<i>Southwest Airlines v. Saxon</i>	
<b>E. FAA Preemption</b>	10
<i>Viking River Cruises v. Moriana</i>	
<b>F. The Federal Employers Liability Act (FELA)</b>	11
<i>LeDure v. Union Pacific Railroad Co.</i>	
<b>G. Grants of Certiorari</b>	12
<i>Helix Energy Solutions Group, Inc. v. Hewitt</i>	
<i>Sackett v. Environmental Protection Agency</i>	
<b>H. Denials of Certiorari</b>	13
<i>Lil Man in the Boat, Inc. v. City and County of San Francisco</i>	
<i>Carswell v. E. Pihl &amp; 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>	

<b>III. SELECTED DECISIONS FROM AROUND THE COUNTRY .....</b>	<b>15</b>
<b>A. Subject-Matter Jurisdiction in Maritime Cases .....</b>	<b>15</b>
<b>1. Admiralty Jurisdiction in Tort Cases .....</b>	<b>15</b>
<b>a. The <i>Grubart</i> test .....</b>	<b>15</b>
<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 &amp; 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>b. The “navigable water” definition .....</b>	<b>19</b>
<i>DeLagarde v. Tours VI Ltd.</i>	
<i>Montana v. Talen Montana, LLC</i>	
<b>2. Admiralty Jurisdiction in Contract Cases .....</b>	<b>21</b>
<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>B. The Rights of Seamen .....</b>	<b>23</b>
<b>1. Seaman Status Under the Jones Act .....</b>	<b>23</b>
<i>Jarvis v. Hines Furlong Line, Inc</i>	
<b>2. Maintenance and Cure .....</b>	<b>25</b>
<i>Aadland v. Boat Santa Rita II, Inc</i>	
<i>Stemmle v. Interlake S.S. Co</i>	
<b>3. Settlement Agreements .....</b>	<b>31</b>
<i>Williams v. Inflection Energy, LLC</i>	
<b>4. Punitive Damages .....</b>	<b>32</b>
<i>Elorreaga v. Rockwell Automation, Inc</i>	

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

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

<b>B. The Rights of Seamen .....</b>	<b>64</b>
<b>1. Seaman Status .....</b>	<b>64</b>
<b>a. Seaman Status Under the Jones Act .....</b>	<b>64</b>
<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 &amp; Production, Inc</i>	
<b>b. Seaman Status Under the Fair Labor Standards Act .....</b>	<b>73</b>
<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>	
<b>c. Seaman Status Under the Seaman’s Protection Act .....</b>	<b>76</b>
<i>Gummala v. U.S. Department of Labor</i>	
<b>2. Right to Jury Trial .....</b>	<b>77</b>
<i>Herrera v. 7R Charter Ltd</i>	
<b>3. Maintenance and Cure .....</b>	<b>78</b>
<b>a. Willful Rejection of Cure .....</b>	<b>78</b>
<i>Vizinat v. Dupre Marine Transportation, LLC</i>	
<b>b. McCorpen defense .....</b>	<b>78</b>
<i>Savoie v. Inland Dredging Co</i>	
<i>In re Adriatic Marine, LLC</i>	
<i>In re Mike Hooks LLC</i>	
<b>c. Punitive Damages for Failure to Pay Maintenance and Cure .....</b>	<b>80</b>
<i>Moran v. Signet Maritime Corp</i>	
<b>4. Jones Act and Unseaworthiness Litigation .....</b>	<b>82</b>
<b>a. Fraud Counterclaim Against Seaman .....</b>	<b>82</b>
<i>Ingram Barge Co., LLC v. Caillou Island Towing Co</i>	

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

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



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

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

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.<sup>1</sup> In these papers, we try to call attention to significant national-

---

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

---

*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*].

<sup>2</sup> 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 \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits

First appeared as part of the conference materials for the  
31<sup>st</sup> 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"