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

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I. INTRODUCTION

This is the seventeenth 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 sixteen papers are 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)

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

[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, *Recent 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

II. MISCELLANEOUS DEVELOPMENTS AT THE NATIONAL LEVEL

A. Federal Rules Amendments

Amendments to the Federal Rules of Appellate and Civil Procedure will go into effect on December 1, 2017, unless Congress acts on them prior to that date. The affected rules are FRAP 4(a)(4)(B)(iii) (dealing with notices of appeal) and FRCP 4(m) (specifying the time limit for service). Both amendments are highly technical. The FRAP amendment corrects an inadvertent glitch in the 2009 amendments. The FRCP amendment corrects a similar glitch in the 2016 amendment.³

B. Maximum Compensation Rate Under the LHWCA

Section 10(f)(1) of the Longshore and Harbor Workers' Compensation Act⁴ ties the maximum weekly compensation rate to the national average weekly wage. Effective October 1, 2017, the maximum weekly compensation rate will be \$1,436.48 (up from \$1,406.00 in fiscal 2016).

C. Increased Penalty Amounts under the LHWCA

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015⁵ requires agencies to adjust the levels of existing civil monetary penalties annually based on inflation. In October 2016 the penalties were more than doubled for an LHWCA employer's failure to notify the Office of Workers' Compensation Programs (OWCP) if LHWCA compensation is suspended or terminated within 16 days and for failing to file a notice of injury within 10 days of a lost-time injury. Those same penalties were later marginally increased on January 13, 2017. The penalty for failure to file a notice of final payment or suspension of payment is now \$279, and the maximum penalty for an employer's failure to report a LHWCA-covered injury to the OWCP has increased to \$22,957.⁶

§ 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.”).

³ *See Amendments to Federal Rules: What Practitioners Should Know*, 85 U.S. Law Week 1503 (2017).

⁴ 33 U.S.C. § 910(f)(1).

⁵ Pub. L. 114-74.

⁶ 20 C.F.R. § 702.204; *See also* Industry Notice 160 (January 25, 2017), available at <https://www.dol.gov/owcp/dlhwc/lsindustryntices/industryntice160.htm>.

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