

## Sec. 2—Judicial Power and Jurisdiction

## Cl. 1—Cases and Controversies

nated unseaworthiness recoveries by persons covered by the Act and substituted a recovery under the LHWCA itself for injuries caused by negligence.<sup>938</sup>

(3) In *The Harrisburg*,<sup>939</sup> the Court held that maritime law did not afford an action for wrongful death, a position to which the Court adhered until 1970.<sup>940</sup> The Jones Act,<sup>941</sup> the Death on the High Seas Act,<sup>942</sup> and the Longshoremen's and Harbor Workers' Compensation Act<sup>943</sup> created causes of action for wrongful death, but for cases not falling within one of these laws the federal courts looked to state wrongful death and survival statutes.<sup>944</sup> Thus, in *The Tungus v. Skovgaard*,<sup>945</sup> the Court held that a state wrongful death statute encompassed claims both for negligence and unseaworthiness in the instance of a land-based worker killed when on board ship in navigable water; the Court divided five-to-four, however, in holding that the standards of the duties to furnish a seaworthy vessel and to use due care were created by the state law as well and not furnished by general maritime concepts.<sup>946</sup> And, in *Hess v. United*

<sup>938</sup> 86 Stat. 1263, § 18, amending 33 U.S.C. § 905. On the negligence standards under the amendment, see *Scindia Steam Navigation Co., v. De Los Santos*, 451 U.S. 156 (1981).

<sup>939</sup> 119 U.S. 199 (1886). Subsequent cases are collected in *Moragne v. States Marine Lines*, 398 U.S. 375 (1970).

<sup>940</sup> *Moragne v. States Marine Lines*, 398 U.S. 375 (1970).

<sup>941</sup> 41 Stat. 1007 (1920). 46 U.S.C. § 688. Recovery could be had if death resulted from injuries because of negligence but not from unseaworthiness.

<sup>942</sup> 41 Stat. 537 (1920), 46 U.S.C. §§ 761 *et seq.* The Act applies to deaths caused by negligence occurring on the high seas beyond a marine league from the shore of any state. In *Rodrique v. Aetna Casualty & Surety Co.*, 395 U.S. 352 (1969), a unanimous Court held that this Act did not apply in cases of deaths on the artificial islands created on the continental shelf for oil drilling purposes but that the Outer Continental Shelf Lands Act, 67 Stat. 462 (1953), 43 U.S.C. §§ 1331 *et seq.*, incorporated the laws of the adjacent state, so that Louisiana law governed. See also *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971); *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473 (1981). However, in *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986), the Court held that the Act is the exclusive wrongful death remedy in the case of OCS platform workers killed in a helicopter crash 35 miles off shore en route to shore from a platform.

<sup>943</sup> 44 Stat. 1424 (1927), as amended, 33 U.S.C. §§ 901–950.

<sup>944</sup> *Western Fuel Co. v. Garcia*, 257 U.S. 233 (1921); *Just v. Chambers*, 312 U.S. 383 (1941); *Levinson v. Deupree*, 345 U.S. 648 (1953).

<sup>945</sup> 358 U.S. 588 (1959).

<sup>946</sup> Justice Brennan, joined by Chief Justice Warren and Justices Black and Douglas, argued that the extent of the duties owed the decedent while on board ship should be governed by federal maritime law, though the cause of action originated in a state statute, just as would have been the result had decedent survived his injuries. See also *United N.Y. & N.J. Sandy Hooks Pilot Ass'n v. Halecki*, 358 U.S. 613 (1959).