(1) The principal difficulty here was that after *Jensen* the Supreme Court did not maintain the line between permissible and impermissible state-authorized recovery at the water's edge, but created a "maritime but local" exception, by which some injuries incurred in or on navigable waters could be compensated under state workmen's compensation laws or state negligence laws.[925] "The application of the State Workmen's Compensation Acts has been sustained where the work of the employee has been deemed to have no direct relation to navigation or commerce and the operation of the local law 'would work no material prejudice to the essential features of the general maritime law.'"[926] Because Congress provided in the Longshoremen's and Harbor Workers' Compensation Act for recovery under the Act "if recovery . . . may not validly be provided by State law,"[927] it was held that the "maritime but local" exception had been statutorily perpetuated,[928] thus creating the danger for injured workers or their survivors that they might choose to seek relief by the wrong avenue to their prejudice. This danger was subsequently removed by the Court when it recognized that there was a "twilight zone," a "shadowy area," in which recovery under either the federal law or a state law could be justified, and held that in such a "twilight zone" the injured party should be enabled to recover under either.[929] Then, in *Calbeck v. Travelers Ins. Co.*,[930] the Court virtually read out of the Act its inapplicability when compensation would be afforded by state law and held that Congress's intent in enacting the statute was to extend coverage to all workers who sustain injuries while on navigable waters of the United States

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lice powers respecting maritime activities concurrently with the Federal Government, such as by providing for liability for oil spill damages, noted that *Jensen* and its progeny, although still possessing vitality, have been confined to their facts; thus, it is only with regard "to suits relating to the relationship of vessels, plying the high seas and our navigable waters, and to their crews" that state law is proscribed. Id. at 344. *See also* Sun Ship v. Pennsylvania, 447 U.S. 715 (1980).

[925] Western Fuel Co. v. Garcia, 257 U.S. 233 (1921); Grant-Smith-Porter Ship Co. v. Rohde, 257 U.S. 469 (1922); State Industrial Comm'n v. Nordenholt Corp., 259 U.S. 263 (1922); Miller's Indemnity Underwriters v. Braud, 270 U.S. 59 (1926). The exception continued to be applied following enactment of the Longshoremen's and Harbor Workers' Compensation Act. *See* cases cited in Davis v. Department of Labor and Industries, 317 U.S. 249, 253–254 (1942).

[926] Crowell v. Benson, 285 U.S. 22, 39 n.3 (1932). The internal quotation is from Western Fuel Co. v. Garcia, 257 U.S. 233, 242 (1921).

[927] § 3(a), 44 Stat. 1424 (1927), 33 U.S.C. § 903(a).

[928] Crowell v. Benson, 284 U.S. 22, 39, (1932); Davis v. Department of Labor and Industries, 317 U.S. 249, 252–53 (1942).

[929] Davis v. Dept of Labor and Industries, 317 U.S. 249 (1942). The quoted phrases appear at id. at 253, 256. *See also* Hahn v. Ross Island Sand & Gravel Co., 358 U.S. 272 (1959).

[930] 370 U.S. 114 (1962). In the 1972 amendments, § 2, 86 Stat. 1251, amending 33 U.S.C. § 903(a), Congress ratified *Calbeck* by striking out "if recovery . . . may not validly be provided by State law."