



Texas Ports and Courts Update

November 2020

We have collected and summarized these items to help keep you apprised of the latest news and developments from the ports and courts on the Texas coast.

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1. COVID-19 Ports Update

Like many other regions in the U.S. and worldwide, Texas COVID-19 infections have increased in recent weeks. Although Texas state authorities continue to monitor these developments, no additional restrictions have been added/re-imposed at this time. Accordingly, although social distancing restrictions remain in place, non-essential businesses and restaurants/bars continue to operate and accept patrons/visitors.

Operations at Texas ports have avoided any significant disruptions due to local COVID-19 conditions. Stevedores and terminal facilities continue normal operations with appropriate protective gear and social distancing.

The Ports of Brownsville, Corpus Christi, Freeport, Galveston, Houston, and Port Arthur/Beaumont continue to permit shore leave, and crew changes/repatriation requests are allowed on a case-by-case basis. Local agents have also reported that U.S. Customs and Border Protection (CBP) personnel have largely resumed in-person boarding activities and many agents are likewise now personally attending vessels to conduct paperwork and other routine activities. Strict adherence to COVID-19 precautionary measures (e.g., facemasks, avoidance of physical contact, etc.) is generally required, and many vessels and terminal facilities are requiring that temperatures be taken of anyone boarding/entering. Vessels still need to advise CBP and Coast Guard boarding teams of any crew illnesses prior to embarkation. Vessels are also required to notify the Coast Guard Captain of the Port of any crewmember showing symptoms consistent with COVID-19. Crewmembers can seek testing at medical facilities with testing kits.

While arrangements for the international travel of departing crewmembers continue to present difficulties, CBP, in apparent recognition of these problems, has eased some of its prior restrictions. For instance, in some situations, CBP is no longer requiring departing crewmembers to leave the U.S. via direct, non-stop flights, allowing one U.S. stop to connect with an international departing flight. This obviously has been of great assistance due to the more limited flight schedules that have arisen in the wake of the pandemic. Crewmember departures involving overnight hotel stays in the U.S. have continued to be allowed on a case-by-case basis, but, as reported previously, these situations typically involve the appointment of security guards to accompany the departing crewmember(s), which adds considerable expenses.

2. Recent Port Activity and Development Projects

Despite the various disruptions and difficulties presented by the current global economic climate, Texas ports remain active and are continuing various growth initiatives. Below are some highlights of recent activities and expansion efforts at the Ports of Brownsville, Corpus Christi, Freeport, Galveston, Houston, and Port Arthur/Beaumont.



Brownsville: The Port of Brownsville is seeing an influx of activity and investment with respect to its grain shipping activities. Earlier this year, the Port of Brownsville commenced a series of significant sorghum exports from its 3-million-bushel grain elevator complex to markets in Asia. Various upgrades are currently underway to further increase grain handling capacities, and the Port of Brownsville is working with growers in Texas and other U.S. regions to attract additional product flow. To further these efforts, the United States Maritime Administration's Port Infrastructure Development Program recently awarded the Port of Brownsville a \$14.5 million grant to improve rail and road infrastructure linked to these facilities. In addition to shipping operations, the Port of Brownsville continues to remain an important U.S. location for shipbuilding operations. Keppel AmFELS' Brownsville shipyard was recently awarded a contract to build a Trailing Suction Hopper Dredge (TSHD) in the U.S. for Manson Construction Co. The 15,000 cubic yard self-propelled hopper dredge will be the largest of its kind in the U.S., having a length of 420 feet, breadth of 81 feet and draft of 28.5 feet. The Jones Act dredge is expected to operate primarily in the Gulf Coast and Atlantic Coast of the United States.



Corpus Christi: The Port of Corpus Christi remains the U.S.'s top oil-exporting hub (and its fourth-largest port in total tonnage). Prior to feeling the demand-sapping impacts of the pandemic, oil exports reached a record high of 1.5 million barrels per day in February. While oil exports dropped some thereafter, they have bounced back. August oil exports hit a new record of 1.78 million barrels per day and, despite some intermittent disruptions due to some tropical storm activities in the late summer/early fall, oil export activities continue to proceed strongly, leading local officials to expect that 2020 will be yet another robust year. Although the Port of Corpus Christi has garnered a lot of recent attention with respect to its crude export activities, it is also making tremendous strides to improve its facilities in other areas. For instance, as part of a \$14 million improvement project, the Port of Corpus Christi recently opened 40 acres of stabilized ground for heavy cargo laydown along the north side of the Corpus Christi Ship Channel. Additional rail track for improved operational access and usage has been installed at the site, and it is already being utilized to stage/load wind power components that are steadily arriving at the Port of Corpus Christi for eventual transport to project sites throughout the U.S.



Freeport: Although Port Freeport tends to fall under the radar a bit, it has continued to expand in recent years and is a leading port in the export of crude oil and natural gas liquids, and, in the U.S. – also ranking 6th in chemicals, 17th in foreign waterborne tonnage, and 26th in containers. As we reported previously, Port Freeport is also a growing player in the roll-on/roll-off (Ro-Ro) shipping sector, recently expanding its storage and transloading capabilities with respect to those types of operations. Additionally, in October, Port Freeport commenced work on a dredging project to deepen the Freeport Harbor Channel to depths ranging from 51-56 feet. The estimated completion date for the project is May 2021.



Galveston: The U.S. Centers for Disease Control and Prevention (CDC)'s no-sail order, which began on March 14 and was extended three times, ended on October 31. Although the no-sail order has expired, cruise ships cannot simply begin sailing with passengers on November 1. Instead, the CDC framework calls for testing and safeguards for crew members, and then simulated cruises to make sure the lines can manage COVID-19 risk. Additionally, the Port of Galveston recently approved funding to install touchless bathroom fixtures, Plexiglas sneeze guards, air purifiers and infrared sterilizers in its two cruise terminals as measures to help curtail the spread of COVID-19 and further support efforts to resume cruise transportation activities. Despite these positive signs, it remains unclear when Galveston cruise terminal operations will resume. Carnival has already decided to cancel all cruises through the end of 2020.



Houston: Although container operations at the Port of Houston were impacted by the pandemic, local officials remain upbeat regarding the overall outlook for 2020. The Port of Houston's public container terminals are said to be consistently seeing more than 10,000 transactions through their gates each day, and cargo volume activity continues to steadily increase. While total tonnage across the public docks remains 5% below 2019 figures, September 2020 container volume at the Port of Houston exceeded the prior years' month for the first time since February. The count of twenty-foot-equivalent units (TEUs) handled at the Port of Houston's public terminals increased 1% vs. Sept. 2019. As of the end of October 2020, year-to-date vessel arrivals at the Port of Houston were down 4.9% vs. 2019 year-to-date figures. However, Port of Houston officials are cautiously optimistic that the gap will continue to narrow as we approach year-end.



Port Arthur/Beaumont: The pandemic and the various tropical storm-related disruptions along the upper Texas coast have had an appreciable impact upon shipping activities in Port Arthur/Beaumont. 2020 year-to-date vessel arrivals are down approximately 16% from 2019 year-to-date levels. Like the Port of Brownsville, the Port of Port Arthur Navigation District was a recent recipient of grant funds for facilities improvements. The Port of Port Arthur was awarded approximately \$10 million, which will further initiatives to replace shoreside storage and provide much-needed updates/expansions to all-weather rail and truck transloading facilities.

3. News from the Courts

Current Status of Trials/Court Proceedings in Texas Federal & State Courts

Texas federal and state courts continue to be impacted by the COVID-19 pandemic. Various courts have announced initiatives to resume in-person civil jury trials. The Houston Division of the United States District Court for the Southern District of Texas announced its intentions to resume civil jury trial service in October and protocols for jury service were further delineated. Other federal courts in Texas and various Texas state courts, including the courts in Harris (Houston), Galveston, Brazoria (Freeport), Nueces (Corpus Christi), Cameron (Brownsville), and Jefferson (Beaumont/Port Arthur) Counties have similarly developed COVID-19 jury trial protocols/precautions. While we came within only a few days of proceeding with a federal jury trial in Galveston earlier this month, and we are aware of some isolated jury trial activities in other courts throughout the state, the general norm at this time continues to be for court proceedings to be conducted via videoconference or other remote means, with jury trial settings typically being continued.

Additionally, while the Texas Supreme Court initially ordered the tolling of the applicable statutes of limitations for causes of action filed under Texas law, the most recent tolling order only extended to actions filed in September. At this time, it does not appear that such tolling accommodations will be provided going forward, as attorneys and court personnel have largely adapted to the electronic/remote changes prompted by the pandemic.

Update: *Sanchez v. Smart Fabricators* (Jones Act Seaman Status) – The Fifth Circuit granted *en banc* rehearing.

As we last reported, we are continuing to track the appellate status of *Sanchez v. Smart Fabricators*, which could have a meaningful impact upon the measure of Jones Act seaman status employed by the Fifth Circuit, potentially making it more difficult for claimants to qualify as seamen – which, in particular, would be an important development for the offshore and shipyard industries. In late October, the Fifth Circuit granted the request for *en banc* rehearing, and argument is presently set for January 2021. We will continue to keep you posted.

This update was collectively prepared by our offices in Houston, Galveston, Corpus Christi, and Brownsville. Our offices remain open and fully operational, and our lawyers and marine investigators are conveniently located near each of Texas' major ports.

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