

Texas Ports and Courts Update

January 2021

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

Similar to many other areas, Texas has experienced increased COVID-19 cases and hospitalizations. Due to these developments, some local authorities are reinstating various occupancy/meeting restrictions. For instance, restaurants in the Houston area were recently restricted to 50% occupancy and many bars are temporarily suspending operations.

Notwithstanding the present COVID-19 situation, Texas ports continue to operate without disruption. Shore leave remains allowed, and crew changes/repatriation requests are permitted on a case-by-case basis. U.S. Customs and Border Protection (CBP), Coast Guard, and many vessel agents continue to board vessels and conduct activities in person. 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 via local medical facilities, and rapid COVID-19 testing is now generally available.

In most situations, CBP is not permitting off-signing crewmembers to stay in a hotel as they await their return flights. Instead, they are generally required to proceed directly to the airport for their flights. CBP is generally requiring the following items in relation to a crewmember’s repatriation requests: (1) passport bio page; (2) C1/D visa; (3) I-95 landing permit; and (4) e-tickets with direct flights departing the U.S. airport.

2. Recent Port Activity and Development Projects

Although the pandemic and an active hurricane season created various difficulties last year, Texas ports still had a relatively solid year in 2020, and growth and activity prospects for 2021 appear to be strong.

Overall, vessel arrivals at Texas ports in 2020 were down nearly 5% from 2019 arrivals. A significant portion of this composite downturn is attributable to the nearly worldwide suspension of cruise travel over the past several months. Galveston, typically the fourth-busiest cruise homeport in North America, experienced a 20% percent downturn in vessel arrivals. However, there were some very encouraging bright spots as well. For example, Brownsville's 2020 numbers were up by more than 25%, and Corpus Christi and Freeport each increased by almost 10%.

Below are some highlights regarding the recent port activities and development projects in Brownsville, Corpus Christi, Freeport, Galveston, Houston, and Port Arthur/Beaumont.

Brownsville: Work Cat Trans Gulf LLC officially launched its new container-on-barge service in December between the Port of Brownsville and Port Tampa Bay. This new weekly option connects markets in Florida and the Southeast United States with the Texas Rio Grande Valley and Mexico's industrial centers in Monterrey, Saltillo, and Matamoros. The route is currently being served by two 100-foot by 400-foot oceangoing barges. The shipping route directly between Tampa and Brownsville involves about 40 percent less distance than trucking around the Gulf of Mexico and requires about one-fourth of the fuel, leading to significant environmental savings and emissions reductions.

Additionally, steps continue to be taken towards the development of substantial LNG export facilities at the Port of Brownsville. Texas LNG recently signed a 50-year lease with the Port of Brownsville for its proposed LNG export facility. Two other companies, Annova LNG and Rio Grande LNG, previously made similar commitments for their proposed LNG export facilities at the port. All three projects have already been both state and federally permitted.

Corpus Christi: Petroleum export operations and capacities continue to expand at the Port of Corpus Christi. Crude oil export operations recently commenced at the second deep-water dock at South Texas Gateway (STG), a joint venture between Buckeye Partners and subsidiaries of Phillips 66 and Marathon Petroleum. The dock at the new terminal will facilitate the berthing and loading of two vessels simultaneously. STG recently loaded its first very large crude carrier (VLCC). Upon completion of construction later this year, STG's petroleum products storage capacity will be 8.6 million barrels, with the potential to expand to 10 million barrels, with throughput capacity of up to 800,000 barrels per day at its two deep-water docks.





Freeport: Various Texas projects are still in the race to build U.S. offshore crude export docks capable of loading VLCCs. One of these projects, Sentinel's Texas GulfLink project off the coast of Freeport, recently cleared a major hurdle after the US Maritime Administration (MARAD) issued a draft environmental impact statement in late 2020. A similar Freeport offshore export project spearheaded by Enterprise Products, the Sea Port Oil Terminal (SPOT), also remains on track.



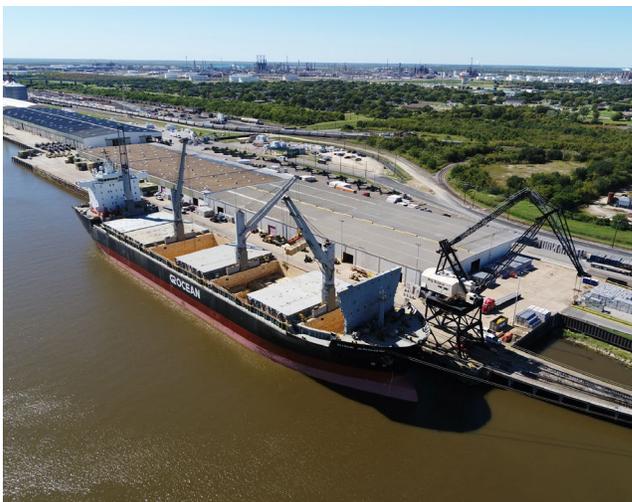
Galveston: As noted above, the pandemic's disruption of cruise travel has substantially impacted the Port of Galveston. Unfortunately, these disruptions continue into 2021. Carnival Cruise Line recently extended its pause of all operations in the U.S. through March 31.

On a more positive note, progress continues to be made in relation to the development of LNG bunkering facilities at Galveston. Pilot LNG recently submitted documents to the Coast Guard to begin the Waterway Suitability Assessment (WSA) which will determine the suitability of the Galveston Bay region, including Galveston, Houston and Texas City, for the company's proposed Galveston LNG Bunker Port. A final investment decision on the bunker port project is expected by late 2021.



Houston: The Port of Houston will be the first U.S. port of call for the new direct Asia service offered by THE Alliance, the space-sharing cooperative association between Hapag-Lloyd, Hyundai Merchant Marine (HMM), Ocean Network Express (ONE), and Yang Ming. The service will begin in Kaohsiung, China, and reach the U.S. Gulf Coast through the Panama Canal. The service will call the Chinese ports of Hong Kong, Yantian, Ningbo, Shanghai, and Pusan before sailing through the Panama Canal to Houston. The service will then make stops in New Orleans and Mobile before returning to Kaohsiung.

Also, Houston recently received federal authorization for the expansion of the Houston Ship Channel, a project that will widen the channel to 700 feet along its Galveston Bay reach and deepen upstream segments to 45 feet, along with other safety and efficiency improvements. The wider lower channel will facilitate the passage of the larger container ships now calling the U.S. Gulf Coast.



Port Arthur/Beaumont: US Development Group (USDG) is developing a multi-modal oil handling terminal in Port Arthur. The terminal is specially designed to handle Canadian heavy crude oil. The \$130 million project is expected to be completed in the second quarter of 2021. The terminal will facilitate access of Western Canadian heavy crude to the Gulf Coast and other markets, allowing Canadian heavy crude extracted from northwestern Canadian tar sands to replace competing feed stock from other imported sources, which are either becoming cost-prohibitive or politically difficult.

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.

The federal courthouses in Brownsville and Corpus Christi closed in December. Reopening of those courthouses will be evaluated on a periodic basis. Although the federal courthouses in Houston and Galveston remain open, access is generally only available for case-specific items required by the assigned judge. The scheduling of in-person, non-jury proceedings and hearings in the Houston and Galveston Divisions is being left to the individual discretion of each respective judge. Jury trials are not going forward in the Southern District of Texas at this time, and, currently, they are not expected to resume before March 2021. The Beaumont Division of the Eastern District of Texas has adopted attendance/operations policies similar to those enacted by the Houston and Galveston Divisions.

Texas state courts continue to utilize telephonic and videoconference means for hearing attendance. Generally speaking, jury trials continue to be postponed. However, there have been a handful of exceptions. Notably, at the end of this past year, our Brownsville office participated in a state court jury trial involving a personal injury matter. Successfully adapting to these unique circumstances, Royston Rayzor was able to secure a complete defense verdict for our client.

From the Fifth Circuit: Knight v. Kirby Offshore Marine Pacific, LLC – A supervisor’s general order to perform a dangerous task does not preclude a finding of the seaman’s contributory negligence

Andrew Knight, an offshore tankerman, brought a claim against his employer, Kirby, for an ankle injury Knight sustained while he was replacing a chafed stern line that was not in use at the time. The captain of the vessel had ordered Knight to change out the line while the vessel was at open sea during less than favorable weather conditions (i.e., winds of at least 20 miles per hour and four-foot seas). As Knight was installing the new line, he stepped on the chafed line and injured his ankle. Knight contended that the rocking of the vessel caused him to lose his balance.

Following a bench trial, the district court concluded: (1) Kirby was negligent because “there were safer times to issue the order to change the line”; and (2) Knight was contributorily negligent because he failed to “watch his footing while replacing the chafed stern line” and failed to “move the chafed stern line to a location on the boat where he would not have stepped on it”. The district court assigned equal fault to Knight and Kirby.

Knight appealed to the Fifth Circuit Court of Appeals, arguing the district court erred by concluding he was contributorily negligent. Knight’s contentions on appeal primarily relied upon a 1974 Fifth Circuit opinion (*Williams v. Brasea, Inc.*) which stated that “a seaman may not be contributorily negligent for carrying out orders that result in his own injury, even if he recognizes possible danger”. Thus, Knight’s argument was essentially that, as a matter of law, he could not be held negligent because he was following his captain’s order.

The *Knight* opinion noted that various jurisdictions have differing perspectives regarding Knight’s argument. For instance, the Ninth Circuit applies a bar on contributory negligence to all orders from a captain. However, the Third Circuit and the Eighth Circuit distinguish between general and specific orders – i.e., whether the seaman was ordered to do a specific task in a specific manner – in determining whether the seaman’s contributory negligence may be considered.

Interestingly, the three judges sitting on the *Knight* panel had three different views on what to do with the *Williams v. Brasea, Inc.* opinion. One of the judges dismissed *Williams* as *dicta* and decided that distinguishing between general and specific orders was the appropriate standard, much like the practices of the Third and Eighth Circuits. Thus, in his view, as the captain’s order was only a general order to perform the task and not a specific order as to how the task should be performed, consideration of Knight’s contributory negligence was appropriate. The second judge took a middle ground. While he did not go so far as to expressly dismiss *Williams* as *dicta*, he nevertheless found that *Williams* afforded sufficient wiggle room for the court to utilize the specific versus general order distinction. He also found that consideration of Knight’s contributory negligence was appropriate. The third judge dissented and found that *Williams* was binding, and, similar to the Ninth Circuit’s position, Knight’s contributory negligence should not be considered.

As a result of the 2-1 vote, the district’s court’s consideration of Knight’s contributory negligence was ultimately found to be appropriate in this instance. In view of the *Knight* judges’ varying perspectives, and the differences amongst the respective federal appellate circuits, this may not be the end of the story for this case. Knight has already petitioned the Fifth Circuit for an *en banc* review by the full court. We will keep an eye on things and let you know if there are any further developments.

A copy of the *Knight* opinion may be accessed via the following link:

<https://www.ca5.uscourts.gov/opinions/pub/19/19-30756-CV0.pdf>

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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