

# Avoid Malpractice by Asserting Admiralty Law Claims

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Imagine your client sends you a products liability claim. The suit involves stoves that exploded while being transported on a ship on a river. The explosion caused serious injury to several people on board. The first thing you check is when the incident occurred in order to determine whether or not the statute of limitations has run. Fortunately, if you are a defense attorney, the accident occurred two and a half years ago and your state, like most, has a two year statute of limitations on personal injury claims. Unfortunately, if you are the plaintiff's attorney, you are barred from filing suit.

The clients are advised accordingly: there is no claim; the statute of limitations has run. The corporation closes its file, and the potential plaintiff walks away without remedy. However, the potential plaintiff does not like hearing "no" for an answer and decides to seek a second opinion. The second plaintiff's attorney tells the injured plaintiff it is a great case: clear liability. The plaintiff asks why the state's two year statute

of limitations will not prevent the filing. His attorney tells him, "Hey, not a problem. We can assert an admiralty claim and admiralty law has a three year statute of limitations for maritime tort. Also, by the way, you have a potential malpractice claim against your first lawyer."

The products liability suit is filed. The first plaintiff's attorney is sued for malpractice. The corporate client fires its defense lawyer and sues him for malpractice. Sound far fetched? It is not.

We recently defended a lawyer who was being sued for legal malpractice due to his failure to assert admiralty law claims. This lawyer did not practice in a coastal city and was not representing an entity connected to shipping, the ocean, or any obvious maritime activity. He was an experienced, successful, and well-respected trial lawyer. Nonetheless, his former client sued him because he failed to assert an admiralty law claim in a complaint, and therefore, was not able to take advantage of the three year statute of limitations for wrongful death ac-

tions in admiralty law / maritime tort. 46 U.S.C. App. § 763(a).

This is serious business. Admiralty law has a number of nuances that can dramatically change the shape of litigation. For example, there is the *Pennsylvania Rule*. The *Pennsylvania Rule* shifts the burden of proving tort liability from plaintiff to defendant. The *Pennsylvania rule*, "shift(s) to the defendant the burden of disproving the causation...". See generally *Poulis-Minott v. Smith*, 388 F.3d 354, 363 (2004). Another "gottcha" in Admiralty law is it recognizes pure comparative fault. *Lewis v. Timco, Inc.*, 716 F.2d 1425 (1984). Pure comparative fault is a departure from the statutory scheme enacted in most jurisdictions.

This article is intended to place lawyers on notice of potential admiralty law claims and provide a survey of the same.

## BACKGROUND

Admiralty law is a uniform set of rules for governing the activity of navigable waterways. Damages and remedies found in

admiralty law have “no requirement that the maritime activity be exclusively commercial.” *Foremost Insurance v. Richardson*, 457 U.S. 668, 674, 102 S.Ct. 2654 (1982). The U.S. Supreme Court in *Foremost* also held the negligent operation of a vessel on navigable waters—including a pleasure boat—“has a sufficient nexus to traditional maritime activity to sustain admiralty jurisdiction.”

### 1. Navigable Waterway Defined

The traditional domain of admiralty law is the sea over all “navigable waters.” The determination of “navigability” is usually a question of fact. The test for resolving this issue of fact is the presence of an “interstate nexus”, i.e., the waterbody in question must be available as a continuous highway for commerce between ports and places in different states (or between a state and foreign country). Additionally, substantive admiralty law applies to waterbodies that have “navigability-in-fact”, i.e., they must be used or capable of being used for the “customary modes of trade and travel on water”—this is met by the proof of present or potential commercial shipping.

### 2. Vessels Defined

Vessels are defined as structures built to transport goods and passengers over water. 1 U.S.C. § 3. Navigable waters for purposes of admiralty jurisdiction are waters that are used, or could be used, as an artery of commerce. *Adams v. Montana Power Co.*, 528 F.2d 437, 440 (1975). Accordingly, there are no impediments, for example, to plaintiff seeking relief under admiralty tort law for a wrongful death that resulted from a purely recreational boating activity on a navigable waterway.

By way of example for the broad nature of admiralty jurisdiction, if an aircraft transporting passengers or goods over navigable waters crashes at sea due to engine failure, the resultant claims for property damages and personal injury and death will be within admiralty jurisdiction. *Smith v. Pan Air Corp.*, 684 F.2d 1102, 111, 1983 AMC 2836 (5th Cir. 1982); *Lindsay v. McDonnell Douglas Aircraft Corp.*, 460 F.2d 631, 1974 AMC 1341 (8th Cir. 1972).

### PROCEDURE

Like traditional tort cases, plaintiffs must establish personal jurisdiction over the defendant(s). Courts acquire personal jurisdiction, in admiralty cases, when plaintiffs properly serve defendant(s) with process pursuant to a statute or rule, and the service does not violate standards or due process. *Hedrick v. Daiko Shoji Co.*, 715 F.2d 1355

(9th Cir. 1983). Due process is determined primarily by whether or not there are “minimum contacts” between the defendant and the forum. *Coats v. Penrod Drilling Corp.*, 5 F.3d 877 (5th Cir. 2002). State and federal courts are bound by due process limits under admiralty jurisdiction. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). Importantly, under *Bell v. Hood*, 327 U.S. 678 (1946), if a complaint seeks admiralty jurisdiction, then the Court must entertain the suit and can only dismiss the action for failure to state a claim.

Subject matter jurisdiction is conferred to the federal district courts. 28 U.S.C. § 1333. Claims in maritime law may be based on federal question, diversity, or FRCP 9(h). However, admiralty claims are not federal question cases. *Romero v. International Terminal Operating Co.*, 358 U.S. 354 (1959). If there are multiple bases for federal jurisdiction, then a claimant may specifically assert admiralty jurisdiction based on FRCP 9(h); this triggers special remedies found within maritime law. For example, there are special remedies to enforce cargo claims, mortgage foreclosures, claims for seamen’s wages, collision damages, supplies, repairs, pilotage, salvage, towage, wharfage, stevedoring, breach of a charter party, unseaworthiness, and/or maintenance and cure.

### SUBSTANTIVE AREAS OF LAW

The substantive law applicable in admiralty cases is generally the federal maritime law. Federal maritime law comes from both statutes passed by Congress and case law. The four primary categories of substantive admiralty law are: 1) the General Maritime law; 2) Federal statutes; 3) International Agreements; and 4) some state law.

#### 1. Products Liability

When a vessel is involved in an accident on navigable water, then admiralty jurisdiction probably exists. The fact the defective product was manufactured on land or the wrongful act occurred on land is of no significance. For the maritime relationship to exist, it is enough that the allegedly defective product in fact causes an accident involving a vessel or inflicts damage or personal injuries on navigable waters. *Sperry Rand Corp. v. Radio Corp. of America*, 618 F.2d 319 (5th Cir. 1980).

The products liability theory may also be employed when defective machinery causes personal injury or death without damage to a vessel. Admiralty tort jurisdiction is present if the injury occurred on navigable waters and there is a significant relationship to maritime activity. *Schaeffer*

*v. Michigan-Ohio Navigation Co.*, 416 F.2d 217 (6th Cir. 1969).

#### 2. Wrongful Death

*Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199, is the leading U.S. Supreme Court case on wrongful death actions under admiralty law. Yamaha holds when a nonseafarer (a person who is neither a seaman nor a longshoreman) is killed within state waters (generally within three nautical miles of shore), the remedies under general maritime law can be supplemented by state law remedies, including state statutory wrongful death and survival remedies. A limit on the applicability of such state law remedies, however, is that they do not conflict with or alter the essential character of maritime law.

#### 3. Damages

The damages under admiralty law look at three basic factors: 1) loss of earning capacity; 2) medical and other expenses; and 3) pain and suffering.

Punitive damages can also be awarded in maritime claims. To recover punitive damages the claimant must show deliberate wrongdoing—willful, wanton, grossly negligent, or unconscionable conduct so as to show callous disregard for the rights of others.

### CONCLUSION

When a suit involving a potentially navigable waterway comes across your desk, think about admiralty law. Its application is broad and, in some instances, may provide you better remedies or defenses. Asserting it may also prevent a legal malpractice claim against you.



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