



## Admiralty & Maritime Claims Against Uncle Sam: Avoiding Red Tap Traps

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Dealing with an unfamiliar "niche" area of the law, and dealing with the federal government are two situations that can be extraordinarily frustrating for lawyers and paralegals alike. Separately, these things can be exasperating, but combining them and dealing with the federal government on an admiralty or maritime law claim can lead the unwary into a flabbergasting array of arcane concepts and procedural traps.

The following information should help paralegals chart an initial course through the fog of this process, concentrating on tort claims for personal injury or property damage suffered at the hands of a federal government agency involved in maritime matters such as the Navy, Army Corps of Engineers, or the US Coast Guard.

### What's Covered

Not every tort involving a boat or water is covered by admiralty jurisdiction. To fall within admiralty jurisdiction, and thus the statutes that waive sovereign immunity for such matters, a tort must generally occur on "navigable" waters, it must have a "potentially disruptive impact on maritime commerce," and the incident must bear a "substantial relationship to traditional maritime activity" (see: *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 US 527 (1995); and *Sisson v. Ruby*, 497 US 358 (1990)).

There are reams of case law defining what incidents do and do not meet these tests, but some courts have found admiralty jurisdiction to exist under these tests in matters involving airplane crashes, jet ski accidents, and even individual swimming and diving accidents. Oddly, claims arising from new construction of vessels are not covered by admiralty jurisdiction (see: *Peoples Ferry Co. v. Beers*, 61 US 393 (1858)), but claims arising from the repair or reconstruction of a vessel, are covered (see: *North Pacific S.S. Co. v. Hall Bros. Shipbuilding*, 249 US 119 (1919)).

If your claim against a government agency appears to meet this test for admiralty jurisdiction in general, then there are two basic statutory schemes at issue in the vast majority of admiralty cases against the US Government:

1. The *Public Vessels Act* (PVA), 46 USC 31101, *et seq.*

The PVA is specific to torts caused by ships owned by the government. For instance, a collision involving a Navy vessel and a private boat, or entanglement of a fishing net by a US Army dredge would be brought under the PVA.

2. The *Suits in Admiralty Act* (SIAA), 46 USC 30901, *et seq.*

The SIAA covers liability for other maritime claims against the government, which do not directly involve a ship.

These acts waive sovereign immunity and allow claims and suits to be brought by private parties against the federal government. To avoid confusion, many admiralty practitioners simply cite to both statutes when submitting a maritime claim against the government. Under both acts, the only proper defendant to such a suit is "The United States of America" and not the specific agency involved.

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Both acts have a strict two-year statute of limitations. If suit is not brought within two years of the incident, it simply cannot be maintained. This differs from the "normal" maritime tort statute of limitations, which is three years from the date of the incident, so claimants must be aware of this difference.

Further, submitting an administrative claim to the government agency prior to the expiration of the two-year period does **not** toll the statutory period. If a claim has not been resolved within two years of the incident date, one simply has to file suit to protect the case from dismissal, even if you had hopes of an eventual settlement.

## Where to File

Administrative claims against the US Navy under either the PVA or the SIAA, can be made by submitting a description of the accident and resulting damages, along with a request for compensation made directly to the government agency involved. For cases against the US Navy, (including the Military Sealift Command) the claims process is set out in 32 CFR part 752, but the gist is that you simply send a letter to the office of the Judge Advocate General, Code 11 (1322 Patterson Avenue, Suite 3000, Washington Navy Yard, DC 20374-5066), setting forth your claim and your damages. You should include estimates, medical bills, or whatever other support you may have.

Claimants are promptly contacted and a JAG officer will investigate your claim and attempt to work with you towards resolution. However, legal defenses will be raised and pursued, and the Navy and the Coast Guard claims offices are prohibited from paying claims that are not legally and factually meritorious.

Similarly, claims against the US Coast Guard under one of the named statutes can be made by submitting them directly to the Coast Guard. Claims arising on the East Coast/Atlantic region should be sent to the Commander, US Coast Guard, Legal Service Command Norfolk (300 East Main Street, Suite 400, Norfolk, VA 23510-9100).

West Coast/Pacific claims should be sent to the Commander, US Coast Guard, Legal Service Command Alameda (Building 54C, Coast Guard Island, Alameda, CA 94501-5100). Unlike the Navy, and despite the lack of a statute requiring it, the Coast Guard claims offices prefer that admiralty claims be submitted on a specific form-the SF95, which is available at the US Coast Guard Website ([www.uscg.mil/lsc/docs/SF95.pdf](http://www.uscg.mil/lsc/docs/SF95.pdf)).

## Another Statute

Another statute exists, in combination with either the PVA or SIAA, under which claims can be made against the government. This is the *Admiralty Jurisdiction Extension Act* (AJEA), 46 USC § 30101. This act applies to claims for torts arising on vessels on navigable waters, but where the effect of the tort occurs on land.

If, for example, an object being unloaded from a ship tied up at a dock falls from the ship due to negligence onboard, but injures someone standing on land, the AJEA would supply admiralty jurisdiction even though the injury occurred on dry land. Although a rather large stretch of admiralty jurisdiction that has not been widely adopted, one case even extended the AJEA to provide jurisdiction for injuries sustained in a car crash several miles from any waterway, where the driver had been over-served alcohol while onboard a casino ship prior to disembarking and driving away (see, *Young v. Players Lake Charles, LLC*, 47 F.Supp.2d, 832 (SD.Tex. 1999).

A special trap exists for lawyers and paralegals with claims that fall under the AJEA. Unlike claims brought solely under the PVA or SIAA, before a lawsuit can be filed against the Government under the AJEA, a formal claim **must** be submitted to the government agency involved, as a non-waivable, jurisdictional requirement (see the following section on the *Federal Tort Claims Act* and the strict time deadlines for submission of such claims.)

As a result of this potential trap, some practitioners, if time allows, simply submit administrative claims for all admiralty cases they have. This avoids a potential motion to dismiss for failure to submit an administrative claim, if and when the Government agency decides that the AJEA was indeed applicable after all.

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## Yet Another

Claims for pollution injuries and damages can fall within admiralty jurisdiction as well. The test for admiralty jurisdiction in pollution cases is whether the activity of the **claimant** meets the required maritime nexus, **not** whether the polluter's activities were inherently maritime (see *Union Oil co. v. Oppen*, 501 F.2d 558 (9<sup>th</sup> Cir. 1974)).

However, the specifics of making pollution claims are esoteric. Given recent events involving British Petroleum in the Gulf of Mexico, claims options and jurisdictional issues should be carefully investigated before making a decision one way or the other.

If a personal injury or property damage matter does not fall within Admiralty jurisdiction, the fourth statutory scheme to be aware of is the *Federal Tort Claims Act* (FTCA) 28 USC § 1346(a), 2671-2680). As with the AJEA, there is a strict provision that before any suit can be brought, claimants must submit a formal administrative claim (on form SF95) to the government agency involved. These forms can be found online and downloaded from any government agency's Website, including the previously shown Coast Guard Website.

A particularly vexing trap for the unwary arises from this administrative claim requirement. Under FTCA, there is a two-year statute of limitations, running from the date of the incident, but the act requires that administrative claims be brought and denied prerequisite to suit. It also provides that a claim will be considered "denied" and the suit allowed to proceed if the agency fails to act on the administrative claim within six months of receipt.

Therefore, despite the two-year statute of limitation, a claimant must actually submit his claim within 18 months of the accident in order to allow for the six-month denial to occur before the limitations period expires. Filing the administrative claim does not toll the two-year limitations period, and filing a claim after the 18-month mark passes, is very often too late.

Knowledgeable and helpful professionals staff most government legal offices and claims departments. A great deal of information can be obtained directly from them, or from the agency Websites.

When in doubt about any of the preceding issues, the best course of action may be to contact an admiralty lawyer familiar with the perplexing details and traps inherent in this specialty. Many malpractice claims arise when people attempt to work outside their usual specialties or comfort zones in unfamiliar areas of the law.

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