1993

The Administrative Claim Prerequisite to Suit Against the United States under the Admiralty Jurisdiction Extension Act

Craig H. Allen

Follow this and additional works at: https://digitalcommons.law.uw.edu/faculty-articles

Part of the Admiralty Commons

Recommended Citation

This Article is brought to you for free and open access by the Faculty Publications at UW Law Digital Commons. It has been accepted for inclusion in Articles by an authorized administrator of UW Law Digital Commons. For more information, please contact cnyberg@uw.edu.
The Administrative Claim Prerequisite to Suit
Against the United States Under the Admiralty
Jurisdiction Extension Act

CRAIG H. ALLEN*

INTRODUCTION

The Admiralty Jurisdiction Extension Act (AJEA)\(^1\) confers federal admiralty jurisdiction over all causes of action for vessel-caused damage done or consummated on land. In extending admiralty jurisdiction to land-based damage, the Act not only opened admiralty courts to a new class of litigants, it also enlarged the range of possible claims which could be brought against the United States under the Suits in Admiralty Act (SAA)\(^2\) or the Public Vessels Act (PVA).\(^3\) At the same time, however, an important prerequisite to suit against the government was incorporated into the AJEA that is absent from the SAA or PVA: where an injured party's cause of action arises under the AJEA, the Act provides that no suit may be filed against the United States until six months after the individual has filed an administrative claim with the responsible federal agency. Compliance with the administrative claim requirement is jurisdictional; failure to satisfy the requirement will result in dismissal of an injured party's suit.\(^4\)

This article examines the provisions of the AJEA and the statute's effect on the Suits in Admiralty Act and Public Vessels Act. It next identifies the causes of action against the United States which may arise under the AJEA. Finally, the article describes the elements of

---

*Lieutenant Commander, U.S. Coast Guard; J.D., University of Washington (1989); Member, Oregon Bar.

The views expressed are those of the author alone and should not be construed as representing the views of the Commandant of the Coast Guard or any other agency of government.

\(^4\) See infra notes 76-77 and accompanying text.
an administrative claim and the requirements for presentment of such claims.

I. ADMIRALTY JURISDICTION OVER TORTS

The Constitution confers jurisdiction over admiralty and maritime cases on the federal courts.\(^5\) Admiralty jurisdiction extends to both contract and tort cases. A tort is maritime and therefore within the federal admiralty jurisdiction if it meets the "locality plus" test established by the Supreme Court in *Executive Jet Aviation, Inc. v. City of Cleveland*.\(^6\) Under that test, a tort is maritime if: 1) it occurs on the navigable waters or high seas (the locality prong),\(^7\) and 2) the wrong bears a significant relationship to traditional maritime activity (the nexus prong).\(^8\)

A. Congressional Extension of the Locality Prong

Historically, maritime torts have been deemed to "occur" not where the wrongful act was committed, but where the impact of that act or omission produced the injury.\(^9\) Before enactment of the AJEA, the Supreme Court narrowly construed the "occurrence" definition in the locality prong of admiralty jurisdiction. In *The Plymouth*,\(^10\) the Court was faced with the question whether a claim for damage to a wharf and other land structures which occurred when a fire spread


\(^7\) A narrow exception to the locality test has been recognized in claims for tortious interference with maritime employment opportunities. Carroll v. Protection Maritime Ins. Co., 512 F.2d 4, 8–9 (1st Cir. 1975); see also Smith v. Atlas Off-Shore Boat Serv. Co., 653 F.2d 1057 (5th Cir. 1981). But see Smith v. Pan Am Corp., 684 F.2d 1102 (5th Cir. 1982) (maritime tort jurisdiction exists only upon finding of locality and nexus).

\(^8\) Annot., supra note 6. The party seeking to invoke admiralty jurisdiction must show a substantial relationship between the activity giving rise to the incident and traditional maritime activity. Sisson v. Ruby, 110 S. Ct. 2892, 2897, 1990 AMC 1801, 1806 (1990). The "activity" which is examined is the general conduct from which the incident arose. Id.


\(^10\) Hough v. Western Transp. Co. (The Plymouth), 70 U.S. (3 Wall.) 20, 36 (1866) ("'The jurisdiction of the admiralty does not depend upon the fact that the injury was inflicted by the vessel, but upon the locality—the high seas, or navigable waters—where it occurred.'").
from a vessel to the structures was cognizable in admiralty. The Court answered in the negative, ruling that no tort was maritime and therefore within admiralty's jurisdiction unless the substance and consummation of the tort both occurred on navigable waters. The reach of admiralty jurisdiction in such cases is unaffected by the fact that the negligent activity may have occurred on land.

Application of the Court's narrow locality rule occasionally resulted in anomalous and inequitable results for injured parties. Following a vessel-bridge allision, for example, the vessel owner had a cause of action in admiralty for damages to the vessel; however, the bridge owner—whose damage had not "occurred" on navigable waters—was relegated to common law courts and remedies.

In 1948, Congress resolved the anomaly by enacting the Admiralty Jurisdiction Extension Act (AJEA), which extended federal admiralty jurisdiction to injuries or property damage occurring on land provided they were caused by a vessel on navigable waters. The AJEA statutorily overruled the Supreme Court's narrow locality test for federal admiralty jurisdiction over torts articulated in The Plymouth.

The Supreme Court has left open the question whether torts which would otherwise be cognizable under the AJEA must also satisfy the nexus prong for admiralty jurisdiction. Commentators and some courts have urged that in the absence of clear congressional direction to the contrary, the nexus requirement should be imposed on torts

---

11 Id. at 36 ("Every species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters, is of admiralty jurisdiction.").


14 62 Stat. 496, codified at 46 U.S.C. app. § 740 (1988). The statute was given no formal title. It is also referred to as the "Extension of Admiralty Jurisdiction Act." The Act was held to be constitutional in United States v. Matson Nav. Co., 201 F.2d 610 (9th Cir. 1953).

15 46 U.S.C. app. § 740 (1988), which reads in pertinent part:

The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

16 Foremost Ins. Co. v. Richardson, 457 U.S. 668, 677 n.7 (1982). Later, the Court also raised the possibility that the nexus requirement may not apply if the tort occurs on the high seas. East River S.S. Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 1986 AMC 2027 (1986).
falling within the locality test under the AJEA.\textsuperscript{17} However, such a judicially-created additional requirement for AJEA jurisdiction is at odds with the plain language of the Act itself, which specifically embraces all claims for damage or injury caused by a vessel on navigable waters. Moreover, judicial importation of a nexus requirement may undermine the strong national interest in uniformity of treatment in vessel-caused damage cases that the AJEA was designed to promote.\textsuperscript{18}

The AJEA merely extended admiralty's jurisdiction; it did not create any new causes of action.\textsuperscript{19} Where a tort cause of action falls within extended admiralty jurisdiction by application of the AJEA, a number of important effects follow. The most obvious is that the Act permits individuals whose vessel-caused injury occurs on land to proceed in admiralty, invoking the benefits of the court's unique procedures and remedies.\textsuperscript{20} Second, by bringing such torts within admiralty's jurisdiction, the AJEA ensures issues of liability, damages, contribution and indemnification will be determined by the general maritime law,\textsuperscript{21} unless the matter is determined to be "mar-

\textsuperscript{17}S. Friedell, 1 Benedict on Admiralty § 173, at 11–41 (7th ed. 1975 & 1993 supp.); Crotwell v. Hockman-Lewis, Ltd., 734 F.2d 767 (11th Cir. 1984); Sohyde Drilling & Marine Co. v. Coastal States Gas Prod. Co., 644 F.2d 1132, 1982 AMC 2644 (5th Cir.), cert. denied, 454 U.S. 1081 (1981). In contrast, the District Court for Alaska, in determining which of the claims arising from the grounding of the T/V Exxon Valdez were within the court's admiralty jurisdiction, first applied the "locality plus" test to the claims for damage on the navigable waters, but in applying the AJEA to the shoreside damage claims examined only the locality and the cause of the damage. In re The Exxon Valdez, 1991 AMC 1482, 1484–86 (D. Alaska 1991).

\textsuperscript{18}Anomalies would arise if the court focused on the injured party's activity in determining nexus, as the Ninth Circuit Court of Appeals did in Union Oil Co. v. Oppen, 501 F.2d 558, 561, 1975 AMC 416, 421 (9th Cir. 1974) ("the 'activity' whose relationship to traditional maritime activity was to be examined was that of the injured party, not that of the tortfeasor."). Under such a test landowners whose land use was related to some kind of maritime activity could proceed in admiralty, while their neighbors whose use was not maritime-related could not. A more reasonable approach would be one that found admiralty jurisdiction based simply on the fact that the damages were proximately caused by a vessel on navigable waters. See In re The Exxon Valdez, 1991 AMC at 1484–86.


\textsuperscript{20}46 U.S.C. app. § 740 (1988) ("In any such case suit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable waters.").

\textsuperscript{21}See Romero v. International Terminal Op. Co., 358 U.S. 354, 360–61 (1959) (admiralty jurisdiction confers upon the federal sovereign the power to determine which courts will hear maritime cases and the power to prescribe the substantive law governing disposition of those cases); Chelentis v. Luckenbach S.S. Co., Inc., 247 U.S. 372 (1918); Southern Pacific Co. v. Jensen, 244 U.S. 205 (1917).
itime but local.” 22 If the suit sounds solely in admiralty and is brought under the court’s maritime jurisdiction pursuant to the AJEA, there is no right to a jury trial. 23

B. Causes of Action Which Fall Within The AJEA

In determining whether causes of action for property damage or personal injury arising from a maritime incident are cognizable under the AJEA the following three part analysis should be followed. First, determine whether the damage or injury was proximately caused by a vessel located on navigable waters. 24 Second, determine whether the damage or injury was done or consummated on land. 25 Third, to identify the universe of possible defendants, look for all causative conduct, whether committed on shore or on navigable waters.

1. Direct Claims

Federal courts broadly construe the terms of the AJEA to include shoreside damage or injuries caused not only by the vessel, but also by her tackle or appurtenances. 26 For example, in Gutierrez v. Waterman Steamship Co., 27 the Supreme Court held that the AJEA extended admiralty jurisdiction to a suit against a vessel by a longshoreman who, while working on the dock, was injured when he slipped on cargo which had spilled from a broken and defective bag being unloaded from the vessel. In remarkably broad language, the Court held:

We think it sufficient for the needs of this occasion to hold that the case is within the maritime jurisdiction under 46 U.S.C. § 740 when, as here,

22Where the matter is maritime but local the court may apply the substantive law of the state in which the tort occurred. Askew v. American Waterways Op., Inc., 411 U.S. 325 (1973); Royal Ins. Co. of America v. Pier 39 Ltd. Partnership, 738 F.2d 1035, 1986 AMC 2392 (9th Cir. 1984).
24Although the AJEA merely states that the damage must be “caused” by the vessel, courts have held there must be a showing of proximate causation. Margin v. Sea-Land Services, Inc., 812 F.2d 973, 975 (5th Cir. 1987); Pryor v. American President Lines, 520 F.2d 974, 979 (4th Cir. 1975), cert. denied, 423 U.S. 1055 (1976).
25Vessel-caused damage or injury consummated on the navigable waters would fall within admiralty jurisdiction without invocation of the AJEA.
it is alleged that the ship owner commits a tort while or before the ship is being unloaded, and the impact of which is felt ashore at a time and place not remote from the wrongful act.\textsuperscript{28}

In \textit{Victory Carriers, Inc. v. Law},\textsuperscript{29} the Court limited the potential reach of the AJEA that might otherwise have resulted from a literal reading of its earlier holding in \textit{Gutierrez}. In \textit{Victory Carriers} the Court held that the claim by a longshoreman injured while driving an allegedly defective forklift on a dock to load a ship was not within extended federal admiralty jurisdiction because the stevedore-owned forklift was not an appurtenance of the ship, nor was it under the control of or on the ship.\textsuperscript{30}

Courts have found AJEA jurisdiction over shoreside injuries arising out of negligent conduct by a vessel’s officers or crew members while operating the vessel, even where the vessel was not a direct cause of the injury.\textsuperscript{31} For jurisdiction to exist, the crewman must have been aboard the vessel and in her service at the time of the negligent act, and the injury must not have been too remote from the act in time or location.\textsuperscript{32}

Shoreside property damage claims arising from ship collisions, groundings, pollution discharges, or vessel wakes are within the federal admiralty jurisdiction by virtue of the AJEA.\textsuperscript{33} “Shoreside” damage includes all damage to real property.\textsuperscript{34} Damage to shellfish beds is included.\textsuperscript{35} At least one court held that the term also includes small craft and all items of personal property along the shoreline.\textsuperscript{36} The AJEA has been invoked successfully in claims alleging damage to property on shore caused by overspray while a vessel on navigable

\textsuperscript{28}373 U.S. at 210, 1963 AMC at 1653.
\textsuperscript{29}404 U.S. 202, 1972 AMC 1 (1971).
\textsuperscript{30}404 U.S. at 210–11, 1972 AMC at 8–9.
\textsuperscript{31}Duluth Superior Excursions, Inc. v. Mahela, 623 F.2d 1251 (8th Cir. 1980) (extending admiralty jurisdiction to claim by cruise ship passenger struck on shore by car driven by a fellow passenger who became intoxicated during the “booze cruise”).
\textsuperscript{32}Id. at 1253 n.5; Clinton v. Joshua Hendy Corp., 285 F.2d 199, 1961 AMC 727 (9th Cir. 1960).
\textsuperscript{33}Louisiana ex rel. Guste v. M/V Testbank, 752 F.2d 1019, 1031 (5th Cir. 1985) (en banc), cert. denied, 477 U.S. 903 (1986); In re Oil Spill by Amoco Cadiz off the Coast of France, 699 F.2d 909, 913 (7th Cir.), cert. denied, 464 U.S. 864 (1983).
\textsuperscript{34}In re New Jersey Barging Corp., 168 F. Supp. 925 (S.D.N.Y. 1958) (admiralty law, not state law, controls damage issues in such cases).
waters was being painted, and to claims for personal injury or property damage caused by smoke or other noxious emissions from vessels.

If negligence in land-based activities of the United States caused or contributed to any "shoreside" damage caused by a vessel on navigable waters, the resulting claim against the United States would lie within admiralty's jurisdiction by application of the AJEA. Although direct claims for shoreside damage may be brought against the United States in such circumstances, and liability would be joint and several, often, injured parties proceed against the vessel and her owner, who may then seek contribution or indemnification from the United States.

Historically, the AJEA provided the jurisdictional basis for claims against the federal government for damage by oil contamination or the resulting cleanup operations to shorelines, cables, piers, bridges, fixed fish traps, fish hatcheries or weirs (if constructed in a way that renders them an extension of land), water intakes, and shellfish beds where the claim alleged that the damage was caused by the joint fault of a vessel on navigable waters and the United States. The AJEA does not, however, extend to pollution damage to the navigable waters themselves or the resources therein. Such damages are within admiralty's jurisdiction without implication of the AJEA.

2. Restitutional and Third Party Claims

The AJEA applies not only to direct claims against the vessel owner or operator, but to all claims arising out of vessel-caused

---

39See infra notes 45–46 and Part II. For example, any cause of action against the federal government which alleges that vessel-caused shoreside damage was caused in whole or in part by the vessel operator's reasonable reliance on faulty government charts, weather warnings, or other navigational information, or the owner's reliance on Coast Guard licensing or inspection activities, would lie in admiralty by virtue of the AJEA.
41For an excellent examination of the maritime law governing contribution and indemnification see Yeates, Dye & Garcia, Contribution and Indemnification in Maritime Litigation, 30 S. Tex. L. Rev. 215 (1989). The authors highlight the enormous risk a non-settling defendant may incur in such cases. Id. at 244-49.
42Most of these claims will now be governed by the Oil Pollution Act of 1990, which requires the President to develop claim presentment and processing procedures. Oil Pollution Act of 1990 § 1013, P.L. 101-380, 104 Stat. 484 (1990) [hereinafter "OPA 1990"].
damage or injury, regardless of the parties sought to be charged. 44 Thus, the AJEA may confer admiralty jurisdiction over an independent suit for indemnity or contribution among joint tortfeasors, even though the joint tortfeasor to be charged neither owned nor operated an involved vessel and committed no actionable conduct on navigable waters. 45

Claims for contribution or indemnification for any claims settled or judgments entered relating to the damages cognizable under the AJEA are also cognizable under the Act. 46 It is therefore critical that parties anticipating a possible claim against the government for contribution or indemnification file a timely administrative claim which meets the requirements of the AJEA if the underlying direct cause of action may fall within the AJEA. 47 Similarly, counterclaims and third party claims relating to damages falling within the AJEA are subject to the Act's administrative claim requirement.

3. Limitations on Jurisdiction

Federal admiralty jurisdiction over cases alleging vessel-caused damage consummated on land is not exclusive of state courts, at least with respect to sea-to-shore pollution. 48 However, where the suit is brought against the federal government, it must be borne in mind that the United States has not consented to domestic suits in other than federal courts, and any liability of the United States for maritime torts is governed by federal law. 49 Moreover, even though suits against the government arising from vessel-caused damage occurring on land may be brought in admiralty, the remedies available to the plaintiff may be limited by applicable sovereign immunity waiver statutes. 50

---

46 See Gebhard v. S.S. Hawaiian Legislator, 425 F.2d at 1307 (AJEA extends to all claims arising out of vessel-caused injury regardless of party to be charged).
47 This conclusion is consistent with the principle that a party bringing an action for indemnity or contribution should be accorded no greater right, and should meet the same preconditions to suit, as the party for whom the direct cause of action is provided. Note, however, that the statute of limitations rules regarding contribution and indemnification actions may differ from those controlling direct causes of action. See infra note 75.
49 Patentas v. United States, 687 F.2d 707, 713 (3d Cir. 1982).
50 See, e.g., 46 U.S.C. app. §§ 741, 781 (1988) (public vessels and cargo not subject to provisional remedies of arrest or action in rem); id. § 743 (libelant may elect to proceed in accordance with the principles of an in rem action); id. §§ 743, 745, 782 (limitations on prejudgment interest).
Causes of action for vessel-caused economic damages "done or consummated on land" (or on navigable waters) that were not accompanied by physical injury or property damage present a contentious issue in admiralty litigation. Even though such economic losses occurring on land are within admiralty's jurisdiction under the AJEA, in most cases they must be dismissed because substantive admiralty law controls, and the general maritime law denies recovery for purely economic harm to third parties.\(^\text{51}\) The rule applies with equal force to causes of action arising under the AJEA.\(^\text{52}\) The government's waiver of sovereign immunity under the SAA/PVA, as extended by the AJEA, is similarly limited by the rule.\(^\text{53}\) Notwithstanding the general maritime law rule in Robins Drydock, compensation for purely economic losses resulting from vessel-caused pollution may be statutorily authorized.\(^\text{54}\)

II. EFFECT OF AJEA ON GOVERNMENT LIABILITY UNDER PUBLIC VESSELS ACT AND SUITS IN ADMIRALTY ACT

Suits against the United States arising from maritime torts by government employees or vessels are cognizable, if at all, only under the Suits in Admiralty Act (SAA)\(^\text{55}\) or the Public Vessels Act (PVA).\(^\text{56}\) The Federal Tort Claims Act (FTCA) specifically excludes claims which fall within the ambit of the SAA or PVA.\(^\text{57}\) Where an alleged tort by the government involves vessel-caused damage done or consummated on land, the AJEA provides:

\[
\text{[t]hat as to any suit against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public}
\]


\(^\text{52}\)Louisiana ex rel. Guste v. M/V Testbank, 752 F.2d 1019, 1031 (5th Cir. 1985) (en banc), cert. denied, 477 U.S. 903 (1986).


\(^\text{54}\)E.g., OPA 1990, supra note 42, § 1002(b)(2); In re The Glacier Bay, 1990 AMC 739, 750 (Trans-Alaska Pipeline Authorization Act preempts general maritime law rule barring purely economic losses).


Vessels Act or Suits in Admiralty Act, as appropriate, shall constitute the exclusive remedy.\textsuperscript{58}

The SAA and PVA therefore provide the exclusive remedy for maritime torts of the United States\textsuperscript{59} and its agents and employees whose acts give rise to the claim, whether occurring on navigable waters or—if caused by a vessel—on land.\textsuperscript{60}

The AJEA only extends admiralty jurisdiction; it does not constitute an independent waiver of sovereign immunity by the United States.\textsuperscript{61} The AJEA can thus be viewed as a statutory shift of the federal government’s tort liability for vessel-caused damage on land from the FTCA to either the SAA or the PVA. An important result of that shift is that actions brought under the AJEA are governed by maritime law.\textsuperscript{62}

Difficult questions concerning application of the AJEA to suits against the United States arise where the United States is not the owner or operator of any involved vessel, but its land-based activities allegedly caused or contributed to the casualty. An easily imagined scenario might, for example, allege that Coast Guard negligence ashore in inspecting an involved vessel or licensing her crew contributed to a grounding or collision resulting in pollution damage ashore. The key issue in such a case is whether the cause of action against the Coast Guard will be bootstrapped into the AJEA by the fact that the damage upon which the suit is based was "caused by a vessel."

As used in the AJEA, the phrase "caused by a vessel" has not been strictly construed. Indeed, Professors Gilmore and Black observed long ago that, as interpreted by the courts in determining jurisdiction under the Public Vessels Act, the word "caused" is "utterly Protean"\textsuperscript{63} and has been given an expansive meaning. In evaluating the reach of the AJEA and the need to file an administrative claim every

\textsuperscript{59}Id.; Kelly v. United States, 531 F.2d 1144, 1146, 1976 AMC 284, 291 (2d Cir. 1976) (suit for acts or omissions by Coast Guard shore-based search and rescue staff must be brought under the SAA, not the FTCA); McCormick v. United States, 680 F.2d 345 (5th Cir. 1982).
\textsuperscript{60}46 U.S.C. app. § 745 (1988).
\textsuperscript{61}Ford Motor Co. v. United States, 187 F.2d 777 (6th Cir. 1951); Port of Bremerton v. United States, 1986 AMC 2870 (W.D. Wash. 1985); 1 Benedict on Admiralty, supra note 17, § 173, at 11-35.
\textsuperscript{62}United States v. Matson Nav. Co. 201 F.2d 610 (9th Cir. 1953); California by Dept. of Fish & Game v. S.S. Bournemouth, 307 F. Supp. 922 (C.D. Cal. 1969).
attorney should carefully consider the expansive interpretation of "causation" given by the court in *J.W. Peterson Coal & Oil Co. v. United States.*64 The case involved suit against the United States and the private owner/operator of a dredge under contract to the United States for damages to the plaintiff's dock during dredging operations. To avoid dismissal of his suit against the government, the plaintiff—who had not filed an administrative claim—argued that since the alleged government negligence occurred entirely on land, and his injury occurred on land, jurisdiction over the government should lie under the FTCA.65 The court disagreed, however, holding that if the government was negligent when it supplied the dredging contractor with maps and information regarding river depths or dredging specifications then the dock owner's claim against the government would fall within admiralty jurisdiction by virtue of the AJEA.66 In a still-valid holding with potentially far-reaching consequences, the court concluded that, because the dock owner's claim against the government stemmed from the government's alleged misdirection of the vessel which caused the damage ashore, jurisdiction over the cause of action arose under the AJEA.67

Up to this point, the court's reasoning was sound and consistent with the majority view that a maritime tort is deemed to "occur" where the injury is felt,68 and that the maritime character of the tort is unaffected by the fact that the tortious act occurred on land.69 In the precedent-setting *Pacific Carrier*70 "smokestack" case, for example, the Fifth Circuit Court of Appeals extended admiralty jurisdiction to a suit against the owner of a smokestack whose emissions unreasonably interfered with navigation, contributing to a vessel allision with a bridge. The court readily found that claims by the bridge owner against the vessel fell within admiralty jurisdiction by virtue of the AJEA. In reasoning that surprised many, the court then extended the logical application of the AJEA, holding that admiralty jurisdiction also extended to the third party claim by the vessel

---

65At the time plaintiff's cause of action arose there was no administrative claim requirement under the FTCA. Id. at 1203 n.5.
66Id. at 1201.
67Id. at 1203; see also Penn Cen. Transp. Co. v. United States, 366 F. Supp. 1161 (D. Del. 1973) (suit against United States alleging damage to plaintiff's submarine cable caused by dredging company under contract to government cognizable under AJEA).
68See supra note 9.
69See supra note 12.
against the smokestack owner. The parallel between *Peterson* and *Pacific Carrier* is evident: had the government operated the smokestack in the *Pacific Carrier* case, it can be seen that the resulting claim against the government for damages occurring on land caused by a vessel would arise under the AJEA, just as did the claim against the government in *Peterson*. The fact that the alleged negligence occurred on land does not alter the outcome.

Unfortunately, the court’s decision in *Peterson* later ran astray, ruling that—even though the cause of action lay within the court’s admiralty jurisdiction—the SAA/PVA did not, at that time, provide a remedy where the government neither owned nor operated the vessel involved. Absent a remedy under the SAA/PVA, the plaintiff dock owner was not barred from seeking relief under the FTCA. Later courts have since ruled that no government vessel need be involved for an admiralty claim to lie against the United States under the SAA by application of the AJEA. Despite this now-discredited finish, *Peterson* still stands for the proposition that all suits for vessel-caused damages suffered on land that were caused at least in part by federal government negligence committed on land fall within the AJEA. Any such suit against the federal government must therefore be preceded by a proper administrative claim.

**III. ADMINISTRATIVE CLAIM REQUIREMENT FOR SUITS AGAINST THE GOVERNMENT**

The SAA and PVA, as extended by the AJEA, provide the sole remedy for maritime torts by federal government-owned or operated vessels, or by employees or agents of the federal government, regardless of ownership of the involved vessels. Both acts contain a two year statute of limitations.

---

71]Id. ("the fact that the agency said to have obstructed navigation here had a nonmaritime origin is irrelevant to any issue since it caused injury to a vessel then underway on navigable waters.")

72*Peterson*, 323 F. Supp. at 1203 (citing Somerset Seafood Co. v. United States, 95 F. Supp. 298 (D. Md.), rev’d, 193 F.2d 631 (4th Cir. 1951)).


No suit may be brought against the United States absent compliance with any procedures and satisfaction of any preconditions imposed by the applicable statutory waiver of sovereign immunity.\textsuperscript{76} Failure by the claimant to satisfy the administrative claim requirement deprives the court of subject matter jurisdiction, requiring dismissal of the case.\textsuperscript{77} Similarly, failure to file suit within the two year statute of limitations under the SAA or PVA will ordinarily result in dismissal.\textsuperscript{78} Accordingly, injured parties whose claims against the United States may arise under the AJEA must carefully examine the Act’s administrative claim requirements.\textsuperscript{79}

A. Administrative Claim Requirements Under the AJEA

Federal administrative claims procedures have served well for nearly 50 years as a simple and inexpensive alternative to litigation. In examining the requirement for an injured party to present an administrative claim before litigation, claimants, the courts, and agency personnel should be responsive to the renewed Congressional mandate for expanded use of alternative dispute resolution methods, including administrative claims.\textsuperscript{80}

Where a cause of action against the government is cognizable under the AJEA, the claimant must submit a written notice of claim to the agency responsible for the damage before filing suit in district court.\textsuperscript{81} The AJEA’s administrative claim prerequisite is similar to the requirements Congress later imposed on claimants whose cause of

\textsuperscript{76}United States v. Sherwood, 312 U.S. 584, 586 (1941); Roberts v. United States, 498 F.2d at 528.

\textsuperscript{77}Loeber v. Bay Tankers, Inc., 924 F.2d 1340 (5th Cir.), cert. denied, 112 S. Ct. 78 (1991); Keene Corp. v. United States, 700 F.2d 836 (2d Cir.), cert. denied, 464 U.S. 864 (1983). Dismissal on grounds of failure to comply with the administrative claim prerequisite is not a dismissal on the merits, however; and the doctrine of res judicata will not bar a subsequent suit if the claim requirement is satisfied within the statute of limitations period. Plyler v. United States, 900 F.2d 41 (4th Cir. 1990); Price v. United States, 466 F. Supp. 315, 316 (E.D. Pa. 1979).

\textsuperscript{78}See infra section III.D (describing equitable tolling).


\textsuperscript{81}46 U.S.C. app. § 740 states that:

no suit shall be filed against the United States until there shall have expired a period of six months after a claim has been presented in writing to the Federal agency owning or operating the vessel causing the injury or damage. An exception is sometimes made for suits by seamen. See, e.g., Henz v. United States, 9 F.R.D. 291 (N.D. Cal. 1949).
action arises under the FTCA.\textsuperscript{82} If the cause of action arises directly under the SAA or PVA, without invocation of the AJEA, there is no requirement for an administrative claim, although claims are nearly always submitted in such cases, as an alternative to immediate suit.\textsuperscript{83} In deciding whether an administrative claim must be filed, it is critical in each case, and for each cause of action, to determine whether the tort alleged properly lies within the AJEA. In the alternative, the prudent attorney will file a timely, precautionary administrative claim to guard against the possibility that a court may later find that the AJEA controlled the cause of action.

Under established federal law, no affirmative relief may be obtained from a sovereign in the absence of specific consent and compliance with any conditions imposed by that grant.\textsuperscript{84} Accordingly, the provisions governing claims and suits against the federal government contained in the AJEA are jurisdictional,\textsuperscript{85} and the plaintiff must plead and prove compliance with them.\textsuperscript{86} Courts may, however, permit the plaintiff to amend the pleadings or supplement the record where it appears that the plaintiff will be able to demonstrate compliance with the administrative claim requirement.\textsuperscript{87}

Upon motion, a district court must dismiss any suit where the plaintiff failed either to: 1) comply with the Act's claim presentment requirement, or 2) wait the mandatory six months after presentment before filing suit.\textsuperscript{88} Both requirements must be met in time to file suit

\textsuperscript{82}28 U.S.C. § 2675(a) (1988). The AJEA included an administrative claim requirement in 1948. In 1966, Congress incorporated a similar requirement into the FTCA. Before that date, the claimant had the option of seeking administrative adjustment, but was not required to do so. L. Jayson, supra note 79, § 315 n.5, at 17–3; Bernmann, Federal Tort Claims at the Agency Level: The FTCA Administrative Process, 35 Case W. Res. L. Rev. 509 (1983).

\textsuperscript{83}Former Vice President Quayle's Commission on Competitiveness recommended amending both statutes to add an administrative claim requirement, but the fate of the initiative is now doubtful.

\textsuperscript{84}United States v. U.S. Fidelity & Guaranty Co., 309 U.S. 506 (1939); State of Alaska v. O.S. Lynn Kendall, 310 F. Supp. 433, 435 (D. Alaska 1970) ("Although a counterclaim may be asserted against a sovereign by way of setoff or recoupment to defeat or diminish the sovereign's recovery, no affirmative relief may be given against the sovereign in the absence of consent.").

\textsuperscript{85}Loeber v. Bay Tankers, Inc., 924 F.2d 1340 (5th Cir.), cert. denied, 112 S. Ct. 78 (1991); Department of Highways, State of Louisiana v. United States, 204 F.2d 630, 632 (5th Cir. 1953) (citing United States v. Sherwood, 312 U.S. 584 (1941)).


\textsuperscript{87}Miller v. Stanmore, 636 F.2d 986 (5th Cir. 1981); Gillespie v. Civiletti, 629 F.2d 637 (9th Cir. 1980).

\textsuperscript{88}Loeber v. Bay Tankers, Inc., 924 F.2d 1340 (5th Cir.), cert. denied, 112 S. Ct. 78 (1991); Pacific Bell v. United States, 636 F. Supp. 312 (N.D. Cal. 1986). The six months begin to run only after the claim is presented to the proper agency. 46 U.S.C. app. § 740 (1988) (claim must be presented to agency owning the vessel); see Smith v. United States, 1989 AMC 1864, 1866 n.1 (9th Cir. 1989).
within the two year statute of limitations. In contrast to the FTCA administrative claim procedures contained in 28 U.S.C. § 2675(a), under the AJEA the claimant must wait the mandatory six months even if before that time the agency denies the claim. A second important difference is that the two year statute of limitations under the SAA/PVA is not tolled by filing an administrative claim, as it is under the FTCA. This is true even if at the time of filing the administrative claim with the federal agency the claimant believed that its cause of action arose under the FTCA. Finally, although the FTCA specifically waives the administrative claim requirement where the cause of action is brought by way of a cross claim, counterclaim, or third party complaint under the Federal Rules of Civil Procedure, no such exception is contained in the AJEA, SAA, or the PVA.

B. Minimum Standards for Compliance With Claim Presentment Requirement

The administrative claim requirements under the AJEA have been equated by the courts with those contained in the FTCA. Several justifications support this conclusion. First, both the AJEA and the FTCA require that the injured party present a “claim” to the appropriate agency. A consistent interpretation of the minimum

---


90 Pacific B. 636 F. Supp. at 314-15. This requirement forces the claimant to present the administrative claim not later than 18 months after the cause of action arises or risk running of the statute of limitations before the mandatory six month wait has expired.


92 Williams v. United States, 711 F.2d 893 (9th Cir. 1983). The outcome may well be different if government personnel misled the claimant into believing the claim was cognizable under the FTCA. See infra section III.D.


94 Keene Corp. v. United States, 700 F.2d 836, 843 n.12 (2d Cir. 1983) ("Like the FTCA, the AJEA requires submission of a notice of claim to the appropriate agency prior to filing suit in the district court. [Plaintiff’s] Amended Notice does not constitute an adequate "claim" under the AJEA for the same reason that it fails to satisfy the FTCA notice requirements.") (dictum).
elements of a "claim" is essential to agencies and, ultimately, to the courts, which must evaluate claims arising under both statutes. Second, since it may not be apparent at the time the claim is presented which statute the cause of action arises under, it is to the claimant’s advantage to have a single standard for claims presentment that is common to all relevant statutes. Third, the policy reasons underlying the administrative claim requirement in federal statutes are identical: to reduce the litigation burden on federal courts by facilitating settlement of claims at the administrative level, decrease the cost of processing claims, and promote fair and equitable treatment of claimants. Finally, by equating the claim presentment requirements in the AJEA with those under the FTCA, courts may draw on the growing body of federal case law and secondary sources interpreting FTCA claim requirements. For all of the foregoing reasons, this article draws on FTCA claim presentment cases where not inconsistent with cases decided directly under the AJEA.

The Department of Justice and all federal agencies that have been delegated claims settlement authority each promulgate regulations establishing their claims procedures. Although an agency may refuse to settle a claim which does not comply with its claims regulations, strict compliance with the agency’s regulations is not a jurisdictional prerequisite to suit.

Following a casualty giving rise to causes of action by more than one party, each party must submit an individual claim. The federal Anti-Assignment Act prohibits transfer or assignment of a claim or any portion of a claim against the United States before the claim has been allowed and a warrant for the amount has been issued.

98Warren v. United States, 724 F.2d 776, 778 (9th Cir. 1984) (en banc). But see infra note 125 and accompanying text.
100§ 3727 (1988). This prohibition applies only to voluntary assignments, not those effected by operation of law, as in subrogation.
The AJEA specifically requires that the notice of claim be in writing. Oral notification does not meet the statutory requirement.\textsuperscript{101} The claim need not be presented in or on any particular form to satisfy the AJEA.\textsuperscript{102} However, for convenience, most agencies request that claims be presented on the federal government's "Standard Form 95," and nearly all claimants do so. Administrative claims must be presented in the name of the real party in interest and by either that person or an authorized agent or representative.\textsuperscript{103} Claims for property damage must be presented by the owner.\textsuperscript{104} Claims for personal injury must be presented by the injured person. A claim for wrongful death may be presented by the deceased's executor, estate administrator, or other authorized person. An insurer may present a claim as subrogee for a loss compensated by insurance. If the claim is presented by or on behalf of a corporation, the claim should be signed by a corporate officer, with a notation of the officer's title or capacity. If presented by an attorney, agent or executor, the claim should be presented in the name of the real party in interest and include evidence of the representative's authority to present the claim on the principal's behalf.

An administrative claim under the AJEA must be presented for adjudication to the federal agency owning or operating the vessel causing the damage or injury.\textsuperscript{105} In those cases where government liability is based on actions other than those flowing from ownership or operation of an involved vessel, the claim should be presented to the agency whose act or omission caused or contributed to the damage. If the claim is mistakenly presented to the wrong federal agency, Department of Justice regulations require the receiving agency to forward the claim to the appropriate agency.\textsuperscript{106} Claims should be presented not later than 18 months after the cause of action accrues, to provide for the mandatory six month processing time before the two year statute of limitations under the SAA or PVA runs.\textsuperscript{107}

\textsuperscript{104}See, e.g., 32 C.F.R. § 750.5 (1993). The term "owner" includes a bailee, lessee, or mortgagor, but does not include a mortgagee or other person having title for security purposes only.
\textsuperscript{107}See supra note 90.
Courts are not in agreement in their interpretation of how specific the notice of claim must be to meet the AJEA requirement to "present" an administrative claim. In two early district court cases decided soon after passage of the AJEA, the courts required very little specificity in the notice and required virtually no mention of the amount of the claim. The courts in both cases merely looked at the purpose of the underlying statutory requirement for an administrative claim—to give the operating agency an opportunity to settle the claim administratively—and found that the letters presented by the claimants fulfilled that purpose. The loose standard applied by these two courts is likely obsolete for two reasons: First, because the causes of action in both cases arose immediately before enactment of the AJEA. Second, both decisions came down before the 1966 amendments to the FTCA, which added the administrative claim requirement to that statute. Therefore neither the injured parties nor the courts had any case law defining the "presentment" and "claim" standards to guide them.

A 1983 decision from the Second Circuit Court of Appeals establishes a better defined standard for administrative claims. In *Keene Corp. v. United States*, a suit by an asbestos manufacturer seeking contribution or indemnification for a number of asbestosis claims against it (some of which had been settled, but none of which had proceeded to judgment), the court held that a claim which demanded "an amount yet to be determined" failed to satisfy the statutory claim requirement. The court concluded that because the claim did not specify the amount of indemnity or contribution it demanded for each

---

108 An admiralty claim is "presented" when a claimant provides the appropriate agency with written notice of a claim for money damages in a sum certain for loss, damage, or destruction of property, personal injury or wrongful death. 33 C.F.R. §§ 750.6(a), 750.8(b) (1993).

109 Clark Terminals of Boston v. United States, 100 F. Supp. 59 (D. Mass. 1951) (two letters, which together named the vessel, generally described the damage, and invited the agency to attend a joint inspection, constituted an adequate written claim); Portland Tug & Barge Co. v. United States, 90 F. Supp. 593 (D. Ore. 1949) (letter to MARAD containing notice of damage to moorage and equipment was adequate).


111 Before enactment of the AJEA, the plaintiff's causes of action in these two cases would have been cognizable under the FTCA, which at that time did not contain an administrative claim requirement. It is to be expected, therefore, that the courts would view liberally any "claim" presented.


113 700 F.2d 836 (2d Cir. 1983).

114 Id. at 841.
underlying lawsuit it was inadequate as an administrative claim.\textsuperscript{115}
Finally, the court held that a claim may not merely state a general basis for liability; it must provide sufficient information to permit the agency to evaluate the nature and merits of its liability.\textsuperscript{116}

In contrast to the Second Circuit Court of Appeals, the Ninth Circuit appears to have adopted a standard of "minimal notice" for administrative claims—at least under the FTCA. In \textit{Warren v. United States},\textsuperscript{117} for example, the court held that a written statement satisfies the "claim" requirement under the FTCA if it: 1) describes the injury in sufficient detail to enable the agency to begin its own investigation, and 2) states a sum certain for damages.\textsuperscript{118}

The first prong of the Ninth Circuit's "minimal notice" test, that the injury need only be described in sufficient detail to permit the agency to begin its own investigation, is sometimes defended on the grounds that the claimant has a limited opportunity for discovery of evidence held by the government before suit is filed. This justification fails to explain why courts do not require the claimant to present all relevant information regarding the claimant's actions, precautions, and damages. The "minimal notice" standard may appeal to a court seeking a rationale to avoid dismissing an injured party's suit, but it is unlikely to promote settlement and avoid litigation through the administrative claims process. Administrative claims procedures, like all means of alternative dispute resolution, require adequate disclosure of information to determine the extent of liability and damages. If the claimant fails to provide adequate information to the agency, settlement becomes less likely.

C. Agency Action upon Presentment of a Claim

Upon presentment of a conforming claim, the agency's claims adjudicator may deny, compromise, settle, or pay the claim in full.

\textsuperscript{115}Id. ("Where separate claims are aggregated under the FTCA, the claimant must present the government with a definite damage amount for each claim.") (citing Kantor v. Kahn, 463 F. Supp. 1160, 1164 (S.D.N.Y. 1979)).

\textsuperscript{116}Id.

\textsuperscript{117}724 F.2d 776 (9th Cir. 1984) (en banc).

\textsuperscript{118}Id. at 780; Adams v. United States, 615 F.2d 284 (5th Cir. 1980), clarified on rehearing, 622 F.2d 197 (1980). Recently, there has been some erosion in even the sum certain requirement. In Thompson v. United States, 749 F. Supp. 299 (D.D.C. 1990), for example, the court held that the technical failure to state a sum certain did not mandate dismissal where an accompanying letter provided sufficient information to estimate the value of the claim. Thompson represents the minority position. Cf. Adkins v. United States, 896 F.2d 1324 (11th Cir. 1990) (dismissing claim for personal injury where administrative claim failed to state a sum certain for those injuries).
Monetary limitations on a settlement authority's power to pay claims varies among the services. Presently, the Secretary of the Navy is authorized to pay claims up to $1 million; the Secretary of the Army up to $500,000; and the Secretary of Transportation up to $100,000, for claims arising from Coast Guard operations. Claims for greater amounts may be forwarded to Congress for payment. When a claim is settled, acceptance of payment by the claimant or the claimant's representative is conclusive.

To adjudicate a claim, federal agencies generally require that the claimant provide the following minimum information: 1) complete identification of the claimant; 2) date, time, and place of the incident giving rise to the claim; 3) the identity of the government vessel or personnel involved (if known); 4) description of the facts and circumstances of the incident; 5) nature and extent of the loss, injury, or damage; 6) sum certain of the amount being claimed; and 7) names and addresses of all known witnesses. If the original filing fails to provide sufficient information for the agency to adjudicate the claim or confirm the value of loss, the claimant may be asked by the agency to supplement or amend the claim, to bring it into compliance. An unexcused failure to submit the requested additional information to support the claim after being requested to do so may result in a later finding by the court that the claim was inadequate, resulting in dismissal of the suit.

---

123To determine the specific requirements of the agency to which a particular claim is to be presented, consult the agency's published claims procedures. See supra note 97.
124In all cases involving significant damage to vessels or other property, the extent of damage and cost of repairs is usually established by joint, formal surveys. In claims against the federal government failure to invite a representative of the relevant federal agency to participate in a joint survey of the damaged vessel can seriously impede both the administrative claims process and subsequent litigation. See generally Meadows, Preparing a Ship Collision Case for Trial, 17 Am Jur Trials 501, at § 121 (1970).
D. Improper Agency Action as a Defense to Defective Claim

Improper acts or omissions by the government may cause a court to deny a motion to dismiss an injured party’s suit for failure or inability to comply with an administrative claim requirement within the applicable statute of limitations. The court may reach this result by ruling that the injured party’s apparently defective claim constructively meets the statutory prerequisite to suit,\(^{126}\) or that the government’s conduct warrants equitable tolling of the statute of limitations.

In receiving a notice of claim, the government will not be allowed to profit by failing to provide the claimant with the information necessary to identify the agency to which the claim should be presented.\(^{127}\) Under such circumstances, the court will hold that the claim was properly presented.\(^{128}\) A critical inquiry in such cases will be whether the government provided what could be construed as legal advice regarding presentment or adequacy of a claim,\(^{129}\) or whether it merely provided the factual information regarding the proper agency to which the claim should be directed.\(^{130}\) It could be argued from \textit{Carr v. United States} and cases like it that failure to provide a claimant with factual information necessary to present a claim will bar the government from asserting those fact-based defects as a defense.\(^{131}\)

Equitable tolling provides a second means of avoiding dismissal of an untimely complaint. Courts have long held that the United States may not be equitably estopped from asserting as a defense to a suit insufficiency of the plaintiff’s administrative claim.\(^{132}\) And, until recently, courts would not equitably toll the statute of limitations in federal waiver of immunity statutes.\(^{133}\) However, in 1990, the Su-

\(^{126}\) Alternatively, the court may simply lower the standard which claims must meet, as the Ninth Circuit did. See supra note 117 and accompanying text.


\(^{128}\) Id. Note that the Department of Justice regulations require that federal agencies forward misdirected claims to the correct agency. 28 C.F.R. § 14.2(b) (1993).

\(^{129}\) Agency personnel are restricted in the type of assistance they may provide claimants and their representatives. Generally, such assistance is limited to information on how to present a claim, the address to which it should be sent, and the supporting documentation required. See 18 U.S.C. § 205 (1988) (no officer or employee of the federal government may act as agent or attorney for another in prosecution of any claim against the United States).

\(^{130}\) In the former case, the court may deem the presentment requirement met. In the latter case, the court will likely not deem a claim “presented” merely because the claimant complains that he was given inadequate “legal” advice by the agency claims official.

\(^{131}\) The agency’s own claims processing manuals may be examined by the court in determining whether the agency acted properly. See, e.g., 32 C.F.R. § 750.8(b) (1993) (U.S. Navy requirement that an “insufficient” claim be returned to the party who submitted it).

\(^{132}\) \textit{Burns v. United States}, 764 F.2d 722, 724 (9th Cir. 1985).

\(^{133}\) Id. at 724.
preme Court swept aside that practice, and created a rebuttable presumption that equitable tolling applies to suits against the United States unless the applicable waiver of immunity statute specifically provides otherwise.134 Potential situations which may justify equitable tolling include those in which the agency failed to notify the claimant of fatal defects in his claim, or in which the claimant was misled by agency claims processing officials into believing that the FTCA claims procedures and tolling provisions applied to the claimant's cause of action.

Because tolling is an equitable remedy which potentially enlarges the federal government's waiver of sovereign immunity, courts will likely be circumspect in reviewing any petition for relief, and will grant such relief only where the balance of equities clearly justifies it. In conducting the balancing, one would expect that a claimant who was represented by legal counsel would be less likely to be granted relief than would an unrepresented claimant who relied on agency claims personnel for guidance.135

CONCLUSION

Major vessel casualties, particularly those which result in significant pollution by oil or hazardous substances, can spawn a number of suits by parties who suffer injury or damage ashore. Even though the injury or damage in such cases was "caused by a vessel," acts or omissions by other parties may have contributed to the casualty. Failure to recognize that the AJEA unavoidably provides admiralty jurisdiction over suits against those whose shore-based negligence contributed to the casualty can have devastating consequences, particularly if the responsible party is the federal government and no administrative claim was filed.

Until Congress resolves the existing statutory hodge-podge by establishing common minimum standards for administrative claims which must be met before any suit can be brought against the government, including those arising directly under the Suits in Admiralty Act and the Public Vessels Act, injured parties have two options. They may carefully study the relevant statutory waivers of sovereign immunity, attempt to determine which one controls their cause of action, then comply with the minimum requirements of that

statute and hope the court later agrees with their reasoning. Or they can pursue a more cautious course by filing an administrative claim in all such cases, adhering to the following standards:

1. The claim should be presented not later than 18 months after the cause of action accrues.

2. The claim should be presented to the agency which owns or operates the vessel which caused the injury or damage or, if a government vessel was not involved, the agency whose conduct may have contributed to the injury or damage.

3. The claim must be written. Claims need not be on any particular form; however, the Standard Form 95 is nearly always used.

4. The claim must be presented in the name of the real party in interest and signed by that party or an authorized agent or attorney.

5. The claim must be for a sum certain.

6. The claim should provide an adequate description of the cause of action (including the date, location, nature, and extent of injury or damage) to permit the agency to conduct an investigation.

7. Any claim for contribution or indemnification should itemize each settled claim and/or judgment.

The prudent attorney will also examine the claims procedures published by the agency to which the claim will be presented and seek additional guidance from the agency claims office when necessary to resolve ambiguities or conflicts.