

**Flying—and Crashing—on the Wings of Fortuity:
The Case for Applying Admiralty Jurisdiction to Aviation Accidents
Over Navigable Waters**

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Ladd Sanger*
Vickie S. Brandt**

Summary

Federal courts have been challenged by the question of whether torts involving airplane crashes over navigable waters are cognizable in maritime law for almost as long as airplanes have existed. A cause of action for wrongful death did not exist under general maritime law until the Supreme Court allowed recovery for loss of support, funeral expenses, conscious pain and suffering, and loss of services in *Moragne v. State Marine Lines, Inc.*, overruling the previous law of *The Harrisburg*. Beginning with *Executive Jet*, courts have attempted to define aviation torts within a maritime law context. Locality and substantial relationship tests developed to evaluate maritime law claims. However, even if maritime law is applied, damages recoverable may differ if the death occurs “on the high seas,” in state territorial waters, or somewhere in between. Damages available under substantive maritime law are not uniform or consistent. Both the status of the claimant and the location of the occurrence make the only certainty a need to examine each case closely to determine the extent of damages recoverable. This paper addresses the need to establish uniformity and equity by applying general maritime law to commercial aviation accidents over navigable waters.

I. Introduction

It was the worst news a wounded nation could hear—an airplane destined for Santa Domingo crashed shortly after taking off from New York’s John F. Kennedy International Airport.¹ On November 12, 2001, American Airlines Flight 587, with 246 passengers and nine crew members aboard, went down in the Rockaway section of New York City. The wreckage was scattered over half a mile—including parts of the plane splashing down in Jamaica Bay.

*Ladd Sanger, J.D. is a Texas- licensed attorney specializing in aviation law with the law firm of Slack & Davis, L.L.P. The authors collaborated on this paper while working at Howie & Sweeney, L.L.P.

**Vickie Brandt, J.D., is a Texas-licensed attorney currently completing her L.L.M. at Southern Methodist University. She is associated with the firm of McCauley, Macdonald & Devin P.C.

The horror of aircraft accidents continues to haunt the modern world. The pictures of such tragedies remain vivid in our consciousness—reminding us of our vulnerability to random tragedy. “The speed, mobility, and range of modern aircraft. . .and the resulting multi-state or multi-nation contacts with aircraft supply, operations, and accident or incident,”² means that in any one aviation case, it is likely that several legal systems may appear to be applicable and proper.³ From the time of the first airplane crashes, courts have struggled with both the appropriate choice of law to be applied in aircraft crashes, and the range of remedies available to compensate victims and their families. Grief-stricken families mourn the loss of the victims. Unfortunately, they soon come to learn that the legal remedies for their loss may be just as turbulent as the crash that took the lives of their loved ones.

December 17, 1903 marked the beginning of the aerospace industry, with the world’s first powered, sustained and controlled flight by Orville and Wilbur Wright at Kitty Hawk.⁴ The “Flyer” was assembled with a variety of rudimentary components—including loose bicycle parts. Following the success of the Wrights, airplane manufacture grew rapidly.⁵ The need for aviation law would quickly follow. More than 100 years later, the jurisprudence of aviation accidents is just as unsettled as it was in the beginning. The law to be applied and the damages awarded depend upon where the plane crashes. However, if the crash occurs in, on or over water—the remedy may depend upon where you started, where you were going, and where the flight ended.

To this day there is no clear legal framework for providing federal jurisdiction over aviation torts.⁶ Typically, aviation, especially commercial airline, torts land in federal courts through diversity, federal question, or admiralty jurisdiction. Admiralty jurisdiction may be applied by virtue of the Death on the High Seas Act (“DOHSA”).⁷ The assertion by a plaintiff of

admiralty jurisdiction may provide procedural and substantive advantages not available in federal or state courts when other grounds are claimed. DOHSA provides a statutory basis for the admiralty jurisdiction determination.

Jurisdiction becomes clouded when the accident occurs within territorial waters. Here, in the absence of specific laws, the federal courts have relied on a number of tests to determine when admiralty law should control the case. It is in the context of this myriad of legal resources for aviation accidents that this paper addresses the need for application of maritime law to aircraft-related litigation over navigable waters.

In many instances, maritime law affords the best remedy for airline crashes because it promotes legal process efficiency, the fair and universal treatment of claims, and uniform legal analysis. Finally, Plaintiffs are frequently afforded a fairer and more complete recovery. The long history of admiralty law suggests that all damage remedies are available—including punitive damages, if not otherwise supplanted by the Warsaw Convention, Death on the High Seas Act (“DOHSA”), or other treaty and federal law. Part II discusses the early history of admiralty law, and the statutory and constitutional application of admiralty to early jurisprudence in the United States. In Part III, the discussion of the modern era of aviation litigation begins with *Executive Jet*, and proceeds through the “Trilogy” cases that form the foundation for later Supreme Court decisions regarding maritime jurisdiction. Part IV discusses implications of the Warsaw Convention on damage awards. Part V explains provisions of the Death on the High Seas Act, including its interaction with admiralty jurisdiction. The consequences of the application of maritime law to aviation litigation is examined in Part VI, beginning with the recognition of wrongful death actions following the Supreme Court’s decision in *Moragne*. The panoply of

available damages is compared, including pecuniary, non-pecuniary, punitive and survival actions. Finally, Part VII concludes with the contention that all aircraft litigation over navigable waters should be heard under the auspices of admiralty law. It will be argued that this is the best remedy for universal treatment and fairness of claims, and would expedite recovery for plaintiffs through a more efficient legal process.

II. Historical Background of Admiralty Jurisdiction

A. Early Precedent

Commerce and maritime law share a centuries-old history. Evidence of maritime commerce in the Persian Gulf, the Arabian Sea, and the Mediterranean Sea, has been found through the translation of hieroglyphic writings in ancient tombs as early as 2000 B.C.⁸ The writings indicate that rules existed to govern commerce.⁹ Modern maritime law is based upon the Rhodian Sea Codes.¹⁰ This set of codes identified and governed the rights and responsibilities of ship owners and seamen. The Rhodian Sea Codes also dealt with the relationship between ship owners and the parties for which they transported cargo.¹¹

Although maritime laws and issues have been in existence for centuries, the foundation for American maritime law can be found in the rules of England.¹² Separate sets of rules and laws governing the unique aspects of maritime commerce developed to govern transportation in navigable waters.¹³ Beginning in the fourteenth century, England established a Court of Admiralty to decide maritime cases.¹⁴ By 1611, Sir Edward Coke, succeeded in restricting the jurisdiction of the Admiralty Courts to cases involving vessels on the high seas or within the ebb and flow of the tide on rivers.¹⁵ This served to severely limit the jurisdiction of the English Admiralty Courts.¹⁶

With the colonization of the New World, admiralty courts were established in each of the Colonies.¹⁷ Each of the courts acted independently of the other colonial courts, and the colonial admiralty courts were much more expansive than their English counterparts.¹⁸ The courts in the Colonies assumed jurisdiction over every case that had some connection to a maritime matter.¹⁹ In addition, the colonial admiralty courts were expected to enforce the collection of duties and taxes for the English Crown through the English Navigational Act.²⁰ Needless to say, this aspect of the colonial admiralty courts was extremely unpopular, and it was quickly dropped with the advent of the Revolutionary War.²¹

B. Federal Authority—Constitutional and Statutory Provisions for Admiralty and Maritime Jurisdiction

Maritime cases were given a unique and significant place in the laws of the United States.

Article III, Section 2 of the Constitution states: “The Judicial Power [of the United States] shall extend. . .to all Cases of admiralty and maritime Jurisdiction...”²² No other classification was selected for this type of specific legal treatment.²³ Historical records indicate that the Founding Fathers were interested in having a uniform judicial system for admiralty cases to improve international trade and commerce.²⁴ The necessity for maritime laws with a national uniformity was emphasized by Alexander Hamilton.

The mere necessity of uniformity in the interpretation of the national laws, decides the question. Thirteen independent courts of final jurisdiction over the same causes, arising from the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed.²⁵

According to Hamilton, even the most adamant states’ rights advocates had not denied the need for a national legal system for maritime issues.

These so generally depend on the laws of nations, and so commonly affect the rights of foreigners, that they fall within the considerations which are relative to

the public peace. The most important part of them are by the present confederation submitted to federal jurisdiction.²⁶

The admiralty and maritime jurisdiction granted in the Constitution, was implemented by Congress with the enactment of the Judiciary Act of 1789.²⁷ Following passage of the Judiciary Act, admiralty cases were segregated by the federal district courts from other areas of jurisdiction, and were processed on their own “admiralty docket.”²⁸ In 1966, the admiralty and non-admiralty dockets merged pursuant to the general provisions of the Federal Rules of Civil Procedure.²⁹ The assertion of admiralty jurisdiction follows procedural rules.³⁰ The claim for admiralty is either a claim in which the grounds for admiralty jurisdiction is the only claim for the suit, or it can be the product of a special pleading even when other jurisdictional options are available.³¹ In the event the court finds no basis for admiralty jurisdiction, and no other grounds for federal jurisdiction exist, the suit will be dismissed.³²

C. Aviation Law and Early Treatment by the Courts

Technological advancements out-pace the law. It should come as no surprise that courts grappled with how to handle early aviation incidents. In the context of maritime activities, the Supreme Court settled on two distinct requirements for finding a case within the provisions of admiralty.

1. Locality of the Tort

The federal courts struggled for many years with the restricted English maritime jurisdictional rules. In *Thomas v. Lane*,³³ Justice Storey stated the principle previously adopted by English courts:

In regards to torts I have always understood, that the jurisdiction of the admiralty is exclusively dependent upon the locality of the act. The admiralty has not, and

