

Navy Admiralty Claims

Theron R. Korsak, Esq.
Commander, JAGC, U.S. Navy (Ret.)



Theron retired from the Navy as a Commander after serving 26 years on active duty. His last sixteen years in uniform were spent as a Navy JAG. His practice was primarily national security law and operational military planning. He spent the last five years of his career in the Navy's Admiralty Tort Claims office where he defended and asserted maritime tort claims involving public vessels.

While on active-duty Commander Korsak served on various ships in the Western Pacific Ocean, the Horn of Africa, and the Arabian Gulf. Ashore, Theron served with the Army, Navy, and Marines in Okinawa, the United Arab Emirates, Iraq, Afghanistan, and Bahrain.

In 2001, Theron earned his JD is from Wayne State University Law School (2001). In 2008, he was awarded a LLM in military and national security law from the U.S. Army Judge Advocate General's Legal Center and School (Charlottesville, VA). Recently, Theron graduated (with distinction) from Tulane University Law School (New Orleans, LA) with a LLM in admiralty and maritime law. His undergraduate degree is a Bachelor of Science in Mechanical Engineering (cum laude) from Michigan Technological University (Houghton, MI).

Theron can be reached at theron.korsak@me.com, or by phone at (202) 227-9870.

Overview

- Jurisdiction
- Contract Claims
- Agency Claims
- Questions

The presentation focuses on the Navy's admiralty tort claim process; however, it will touch on jurisdiction, naval liability, administrative claims, claim conflicts, investigations, litigation, and time for questions at the end.

Jurisdiction

- Federal Admiralty Jurisdiction
 - U.S. Constitution Art. III, Cl. 8
 - Saving to Suitors
- Extension of Admiralty Jurisdiction Act
 - 46 U.S.C. § 30101

Admiralty Jurisdiction

Article III of the Constitution states that the "judicial power shall extend . . . to all Cases of admiralty and maritime Jurisdiction." In the Judiciary Act of 1789, Congress granted to the district courts exclusive original jurisdiction in civil cases in admiralty and maritime matters. Neither the Constitution nor the Judiciary Act of 1789 defined what types of cases constituted "admiralty and maritime matters," leaving the federal courts to establish the boundaries of that jurisdiction. Therefore, any case which truly arises "in admiralty" *may* be brought for decision to an appropriate United States District Court, *see* 28 U.S.C. 1333.

Saving to Suitors

While the 1789 Act specified that district court jurisdiction would be "exclusive," the statute included a clause "saving to suitors the right of a common law remedy, where the common law is competent to give it." In practice, this gave state courts concurrent jurisdiction over many types of contract and tort cases involving maritime subjects. Therefore, the power to decide these cases is shared between the States and the Federal Government.

Two types of claims exist in admiralty: an action *in personam*; and, an action *in rem*. An action *in personam* is one brought against a named natural person. An action *in rem* is a suit brought against a vessel. All suits *in rem* are exclusive to the federal courts, since the common law had no similar procedure for dealing with such cases.

The Extension of Admiralty Jurisdiction Act ("AJEA"), 46 U.S.C. § 30101

The Admiralty Jurisdiction Extension Act provides that the admiralty and maritime jurisdiction of the United States extends to and includes cases of injury or damage, to person or property, caused by a vessel on navigable waters even though the injury or damage is done or consummated on land.

The AJEA does not create new causes of action but merely expands admiralty jurisdiction to encompass ship-to-shore torts, thereby making available a concurrent remedy in admiralty where a common-law remedy existed.

The AJEA does not impliedly amend or affect the coverage of other federal statutes relating to maritime torts and injuries, such as the Longshore and Harbor Workers' Compensation Act (33 U.S.C.A. §§ 901 to 950)⁴ or the Death on the High Seas Act (46 U.S.C.A. §§ 30301 to 30308).

Furthermore, the Admiralty Jurisdiction Extension Act does not silently take away from the states their concurrent police power with respect to sea-to-shore torts or preempt state law in situations involving shoreside injuries caused by ships on navigable waters.

Under the Admiralty Jurisdiction Extension Act, a suit may be brought *in rem* or *in personam*, and, since the Act does not limit the *in personam* action to an action against the owners of the vessel, suit may be brought under the Act against a third party, naming neither the vessel nor its owner as defendant

Jurisdiction

- Sovereign Immunity and Waiver
 - Government cannot be sued absent its consent, [United States v Mitchell](#), 445 U.S. 535 (1980)
 - Suits in Admiralty Act ("SIAA"), 46 USC §§ 30901-30918
 - Public Vessels Act ("PVA"), 46 USC §§ 31101-31113
 - Federal Tort Claims Act ("FTCA"), 28 USC § 2680

Sovereign Immunity and Waiver

The English doctrine of sovereign immunity stands for the proposition that "the King can do no wrong; therefore, he is not subject to suit." The United States adopted the principal from English law upon its founding. The generally accepted view of sovereign immunity was, and still is, that the Government cannot be sued absent its consent, [United States v Mitchell](#), 445 U.S. 535 (1980). Consent is ordinarily achieved through statutes waiving immunity for certain actions. When presented with a broad waiver of immunity, courts have considerable latitude in defining the precise limits of the waiver.

Congressional waiver of sovereign immunity is the prerequisite to any suit brought against the United States under **admiralty** law or otherwise. [Roberts v. U.S., C.A.9 \(Cal.\) 1974, 498 F.2d 520](#), certiorari denied [95 S.Ct. 656, 419 U.S. 1070, 42 L.Ed.2d 665](#). Not until 1920 did the Government consent to suit against its merchant vessels, see Suits in Admiralty Act ("SIAA"), 46 U.S. Code §§ 30901-30918. In 1925, the Government expanded the waiver and consented to suit against the remainder of its public vessels, see Suits Involving Public Vessels ("Public Vessels Act"), 46 U.S. Code §§ 31101-31113.

In 1960, to resolve the jurisdictional problem of the proper forum for a complaint that contains both admiralty and contract elements the SIAA was amended, eliminating the terms "*employed as a merchant vessel.*" The change removed language restricting causes of action under the SIAA to damages caused by a government vessel employed as a merchant vessel. The amendment inserted language that extended the SIAA to all admiralty causes of action that could be brought against a private person or his property. Courts have concluded this amendment expanded coverage of the SIAA to include all maritime torts, not just those involving merchant vessels. As a result of the change, the SIAA allows admiralty claims that previously could have been brought under the FTCA.

The Suits in Admiralty Act (SIAA) and the Federal Tort Claims Act (FTCA) are mutually exclusive waivers of sovereign immunity in that the FTCA excludes all claims against the United States which are governed by the SIAA. [Palischak v. Allied Signal Aerospace Co., D.N.J.1995, 893 F.Supp. 341.](#)

Under the FTCA, the federal government recognizes liability for the negligent or wrongful acts or omissions of its employees acting within the scope of their official duties. In limited circumstances, the United States is liable to the same extent an individual would be in like circumstances. The statute substitutes the United States as the defendant in such a suit and the United States—not the individual employee—bears any resulting liability. The FTCA allows monetary compensation to be awarded when injuries are caused by wrongful (or negligent) actions of government employees. The law of the state where the act or omission occurred must permit the claim. Under the FTCA, an administrative claim is to be filed with the federal agency that you believe is to blame for the negligence or misconduct.

The FTCA provides that a tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such a claim accrues or unless action is begun within six months after the agency mails notice of denial of the claim. [28 U.S.C. § 2401\(b\).](#)

Note: The FTCA contains an explicit exemption from the waiver of sovereign immunity for discretionary functions. While the SIAA or PVA contain no express exception for discretionary functions; these suits have been judicially determined in several circuits to incorporate discretionary function exception to Federal Tort Claims Act, see *Thames Shipyard & Repair Co. v. United States*, 350 F.3d 247, 254 (1st Cir.2003); *Wu Tien Li-Shou v. United States*, 777 F.3d 175, 184 (4th Cir.2015); *B & F Trawlers, Inc. v. United States*, 841 F.2d 626, 630 (5th Cir.1988); *Tobar v. United States*, 731 F.3d 938, 945 (9th Cir.2013).

Jurisdiction

- SIAA
 - Civil Action
 - *In personam* action
 - *In rem*
 - No seizure, arrest, or maritime lien
 - U.S. District Court
 - Where plaintiff resides
 - Principle place of business
 - Where vessel or cargo is found
 - No jury
 - 2 year statute of limitation

Suits in Admiralty Act ("SIAA"), 46 U.S. Code §§ 30901-30918

Congress passed the SIAA which provided that an action *in personam* could be filed against the Government for any case in which a like proceeding in admiralty could be maintained if the Government vessel were privately owned. In other words, if a vessel is owned by the United States, and someone is harmed by the vessel or one of its employees, and the harm is one for which, if the vessel were privately owned, the harmed individual could have sued its owner in admiralty, then the person must bring that admiralty claim against the United States. [Ali v. Rogers, C.A.9 \(Cal.\) 2015, 780 F.3d 1229](#)

A civil action under this chapter shall proceed and be heard and determined according to the principles of law and the rules of practice applicable in like cases between private parties; however, the ***SIAA exempts Government merchant vessels from seizure or arrest.***

A claim against the United States shall be tried without a jury. That said, the action may proceed according to the principles of an action *in rem* if the plaintiff elects in the complaint; and it appears that an action *in rem* could have been maintained had

the vessel or cargo been privately owned and possessed. Such an election does not prevent the plaintiff from seeking relief *in personam* in the same action.

An action under the SIAA shall be brought in the district court of the United States for the district in which any plaintiff resides or has its principal place of business; or the vessel or cargo is found. On a motion by a party, the court may transfer the action to any other district court of the United States.

A civil action under the SIAA must be brought within two years after the cause of action arose. Important, filing a SIAA agency claim will not toll the two year statute of limitation.

Agency Claims

- Public Vessels Act
 - Public vessels of the United States
- Civil Action
 - *In personam*
 - No seizure, arrest, or maritime lien
- U.S. District Court
 - *Where the vessel or cargo is found within the United States*
 - Outside U.S. territorial waters
 - Any district the plaintiff resides or has an office
 - If none, any district court
- 2 year statute of limitation
- Reciprocity Requirement

Suits Involving Public Vessels ("Public Vessels Act"), 46 U.S. Code §§ 31101-31113

The Public Vessels Act ("PVA") governs suits against the United States for damage caused by its public vessels. The statute, passed in 1925, permits a civil action in personam in admiralty, or an impleader filed, against the United States for damages caused by a public vessel of the United States; or compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States.

If the United States brings a civil action in admiralty for damages caused by a privately owned vessel, the owner of the vessel, or the successor in interest, may file a counterclaim in personam, or claim a setoff, against the United States for damages arising out of the same subject matter.

A civil action under the PVA shall be brought in the district court of the United States for the district in which the vessel or cargo is found within the United States.

If the vessel or cargo is outside the territorial waters of the United States the action shall be brought in the district court of the United States for any district in which any

plaintiff resides or has an office for the transaction of business; or if no plaintiff resides, or does not has an office for the transaction of business in the United States, the action may be brought in the district court of the United States for any district.

A civil action under the PVA must be brought within two years after the cause of action arose. Important, filing a PVA agency claim will not toll the two year statute of limitation.

No suit may be brought under the Public Vessels Act by a national of any foreign government unless the court is satisfied that the foreign government, under similar circumstances, allows nationals of the United States to sue in its courts.

However, the reciprocity provision of the Public Vessels Act is inapplicable where the United States, by seeking an affirmative judgment on a counterclaim and arresting a vessel of the foreign government, waives its sovereign immunity, or where the United States first comes into court and in doing so takes the position of a private suitor.

In applying the reciprocity requirement in an action for wrongful death, the court looks to the nationality of the decedent's surviving beneficiaries to whom the cause of action accrues rather than to the nationality of the decedent or the personal representative who brings the action.

Although the Suits in Admiralty Act contains no similar reciprocity provision, a plaintiff whose claim falls within the Public Vessels Act's provision may not circumvent the provision by bringing suit under the Suits in Admiralty Act.

Contract Claims

- Maritime Contract
 - SIAA
 - PVA
- Government Contract
 - Contract Disputes Act, 41 U.S.C. §§ 7101-7109

As a general statement, a "maritime contract" is an agreement to provide goods and services directly to a vessel for the purpose of furthering the vessel's navigation and operations. Admiralty contract jurisdiction focuses on the contract and the expectations of the parties, *see Norfolk Southern Rwy. v. Kirby*, 543 U.S. 14 (2004).

The SIAA and PVA do not provide a maritime contract cause of action, but simply waive sovereign immunity in **admiralty** suits where **admiralty** law provides cause of action. [Southwest Marine, Inc. v. U.S., N.D.Cal.1995, 926 F.Supp. 142.](#)

For Government Contracts, the contract claim process is set by statute, The Contract Disputes Act ("CDA") governs the claim resolution process, 41 U.S.C. §§ 7101-7109.

The CDA provides exclusive remedy for claims arising out of contracts for repairs and enhancements to public vessels, notwithstanding a contractor's contention that claims were traditional maritime claims subject to general **admiralty** jurisdiction, independent of the CDA.

Contract Claims

- Government Contracts
 - Contract Disputes Act, 41 U.S.C. §§ 7101-7109

Submitting a proper administrative claim to the contracting officer is a jurisdictional prerequisite to bringing either a direct action, or an appeal in any federal court under the CDA, even in the maritime context, Shaver Transp. Co. v. United States, 948 F. Supp. 2d 1193, 1199 (D. Or. 2013).

Contract Claims are filed directly with the contracting officer for resolution. Each claim should be in writing and explain the factual and legal reasons why the claimant is entitled to the relief sought. This relief, moreover, could be money or some type of contract modification.

The KO's response should be in writing and give the reasons why a claim was accepted or denied. If the claim is denied, the contractor can appeal to appropriate Board of Contract Appeals or federal court. "Plaintiffs with maritime contract claims against the United States *who have completed the CDA administrative review process* may file suit in a United States District Court" rather than in the U.S. Court of Federal Claims. *Sealift Bulkiers, Inc. v. Republic of Armenia*, No. 95-1293(PLF), 1996 WL 901091

Under the Contract Disputes Act, when the agency receives a claim, the contracting

officer ("KO") must either issue a decision on the claim within 60 days or "notify the contractor of the time within which a decision will be issued." Although there is no hard rule as to how far beyond 60 days the decision may be issued, the contracting officer's decision "shall be issued within a reasonable time . . . taking into account the size and complexity of the claim and the adequacy of the information in support of the claim provided by the contractor." Whether a contracting officer's time frame is reasonable is determined on a case-by-case basis, see Volmar Construction, Inc. v. ASBCA No. 60710 (2016).

Government Contractors generally have six years to file a claim.

Agency Claims

- Admiralty claims against the Navy, 10 USC § 8822
 - Formerly cited as 10 USC § 7622

10 USC § 8822. Admiralty claims against the United States

(a) The Secretary of the Navy may settle, or compromise, and pay in an amount not more than \$15,000,000 an admiralty claim against the United States for--

(1) damage caused by a vessel in the naval service or by other property under the jurisdiction of the Department of the Navy;

(2) compensation for towage and salvage service, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the Department of the Navy; or

(3) damage caused by a maritime tort committed by any agent or employee of the Department of the Navy or by property under the jurisdiction of the Department of the Navy.

(b) If a claim under this section is settled or compromised for more than \$15,000,000, the Secretary shall certify it to Congress.

(c) In any case where the amount to be paid is not more than \$1,000,000, the Secretary may delegate his authority under this section to any person designated by him.

(d) Upon acceptance of payment by the claimant, the settlement or compromise of a claim under this section is final and conclusive notwithstanding any other provision of law.

Agency Claims



Government Owned -
Military Operated (GOMIL)



Government Owned -
Government Operated (GOGO)



Government Owned -
Contractor Operated (GOCO)



Contractor Owned -
Contractor Operated (COCO)



Government Owned-Government Operated-
Military Hospital – MIL/Contractors/NGOs
(GOGO/MTF/COPAX)

USS Detroit (LCS-7) (GOMIL) (Counter Piracy/MIO)

USNS Trenton (T-EPF 5) (GOGO) (HADAR/SPECOPS)

USNS Black Powder (T-AGSE 1) (GOCO) (submarine support vessel)

MT Maersk Peary (T-AOT 5246) (COCO) (charter, built in ROK, flagged NOR, reflagged to US)

USNS Mercy (T-AH 19) (GOGO/MTF/COPAX) (military treatment facility)

Agency Claims

- **Typical Claims**

- Collision
- Allision
- Personal Injury
- Death
- Property Damage
- Wake Damage
- Salvage
- Pollution

Agency Claims

- Typical Claimants

- Military
- Government Civil Mariners
- Government Employees
- Shipyard Workers
- Stevedores
- Vessel Owners
- Vessel Operators
- Salvors
- Government Contractors
- Sub-Contractors
- Guests
- Foreign Governments
- Other Agencies
- Non-Government Organizations
- Citizens (foreign and domestic)

Agency Claims

- Admiralty Tort Claims, 32 CFR § 752.1
- Organization, 32 CFR § 752.2
- Claims against the Navy, 32 CFR § 752.3
- Affirmative Claims, 32 CFR § 752.4
- Salvage, 32 CFR § 752.5

To file a claim in admiralty tort, an alleged wrong must meet admiralty jurisdictional requirements. An incident occurring on navigable waters is not enough to meet admiralty jurisdiction requirements, see *Executive Jet Aviation v. City of Cleveland*, 448 F.2d 151 (6th Cir. 1971). In addition to taking place on navigable waters, the injury or damage must have a significant relationship with traditional maritime activity and a potentially disruptive effect on maritime commerce, *Sisson v. Ruby*, 497 U.S. 358 (1990). Furthermore, To determine the potential impact, the relevant activity at issue must be considered, i.e. whether that activity has a substantial relationship to a traditional maritime activity, see *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995).

The PVA allowed suits against the Government for damages caused by a naval vessel; however, it made no provision to enable the Navy to administratively settle these types of claims.

As mentioned previously, 10 USC § 8822 is the legal authority for Admiralty claims against the United States Navy.

32 C.F.R. § 752.1.

This part applies to admiralty-tort claims. These include claims against the United States for damage caused by a vessel in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy for which the Navy has assumed an obligation to respond for damage. Affirmative claims by the United States for damage caused by a vessel or floating object to Navy property are covered under this part.

Important to note, the SIAA, nor the PVA, do not require an administrative claim with the agency before filing suit in Federal Court.

Agency Claims

- Admiralty Tort Claims, 32 CFR § 752.1
- **Organization, 32 CFR § 752.2**
- Claims against the Navy, 32 CFR § 752.3
- Affirmative Claims, 32 CFR § 752.4
- Salvage, 32 CFR § 752.5

32 C.F.R. § 752.2

(a) Administrative authority of the Secretary of the Navy.

The Secretary of the Navy has administrative authority for settlement and direct payment where the amount paid does not exceed \$15,000,000 and where the matter is not in litigation, of claims for damage caused by naval vessels or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and for towage or salvage services rendered to naval vessels. The Secretary also has authority to settle affirmative admiralty claims for damage caused by a vessel or floating object to property under the jurisdiction of the Navy.

(b) Admiralty and Maritime Law Division of the Office of the Judge Advocate General.

The Navy's admiralty-tort claims are processed and adjudicated in the Admiralty and Maritime Law Division of the Office of the Judge Advocate General. All correspondence with the Admiralty and Maritime Law Division should be addressed to the Office of the Judge Advocate General (Code 11), 1322 Patterson Avenue SE,

Suite 3000, Washington Navy Yard, DC 20374–5066.

(c) Mission and policy.

The primary mission of the Admiralty and Maritime Law Division is to effect prompt and equitable settlements of admiralty claims, both against and in favor of the United States. The settlement procedure has evolved to eliminate the expenses and delays arising out of litigation and to obtain results advantageous to the financial interests of the United States.

Where settlements cannot be made, litigation ensues in the Federal Courts.

The final test of whether a settlement is justified is the probable result of litigation. Settlements are therefore considered and determined by the probable results of litigation. The policy of the Navy is to effect fair and prompt settlements of admiralty claims wherever legal liability exists.

(d) Admiralty-tort claims.

As indicated above, the Admiralty and Maritime Law Division primarily handles admiralty-tort claims. These are claims for damage caused by vessels in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and claims for damage caused by a privately owned vessel to a vessel or property of the Navy (affirmative claims). The Admiralty and Maritime Law Division also handles claims for towage and salvage services rendered to a vessel in the naval service.

(e) Admiralty-contract claims.

Admiralty-contract claims arising out of the operations of the Military Sealift Command (MSC) are handled by its Office of Counsel. MSC is responsible for the procurement of vessels and space for the commercial ocean transportation of Department of Defense cargo, mail, and personnel. It is also responsible for the maintenance, repair, and alteration of Government-owned vessels assigned to it. The Office of Counsel, MSC, deals with the various claims of a contract nature which arise out of these operations. These include claims for cargo damage, charter hire, redelivery, general average, and claims arising under MSC ship-repair contracts.

(f) Damage caused by Navy contract stevedores.

Office of Counsel, Naval Supply Systems Command, has cognizance of admiralty claims for damage caused by Navy contract stevedores. Under these stevedore

contracts, the stevedoring companies are responsible for negligent acts of their employees which result in vessel damage. It is important that the extent of any such damage be accurately determined and promptly reported to the contracting officer having cognizance of the particular stevedore contract involved.

(g) Resolving conflicts. Admiralty-tort claims, such as collision, personal-injury, and death claims, are dealt with by the Admiralty and Maritime Law Division, irrespective of whether an MSC vessel or other naval vessel is involved. Whether any particular claim is to be handled by JAG or by MSC, therefore, is determined by the nature of the claim. Cases may arise which could be handled by either office. If doubt exists, such matters should be reported both to JAG and to MSC. An agreement will then be reached between the Admiralty and Maritime Law Division and the Office of Counsel, MSC, as to how the incident should be handled.

Agency Claims

- Admiralty Tort Claims, 32 CFR § 752.1
- Organization, 32 CFR § 752.2
- **Claims against the Navy, 32 CFR § 752.3**
- Affirmative Claims, 32 CFR § 752.4
- Salvage, 32 CFR § 752.5

32 C.F.R. § 752.3

(a) Settlement authority. 10 U.S.C. 8822 provides settlement authority for damage caused by a vessel in the naval service or by other property under the jurisdiction of the Department of the Navy; compensation for towage or salvage service, including contract salvage, rendered to a vessel in the naval service or to other property of the Navy; or damage caused by a maritime tort committed by any agent or employee of the Department of the Navy or by property under the jurisdiction of the Department of the Navy. The limit on the Secretary's settlement authority is payment of \$15,000,000. A claim which is settled for an amount over \$15,000,000 is certified to Congress for payment. [Section 7622](#) provides that the Secretary may delegate his settlement authority in matters where the amount to be paid is not over \$1,000,000. Under the Secretary's delegation, settlements not exceeding \$500,000 may be effected by the Judge Advocate General. Under the Secretary's delegation, settlements not exceeding \$250,000 may be effected by the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

(b) Settlement is final. The legislation specifically authorizes the Secretary to settle, compromise, and pay claims. The settlement, upon acceptance of payment by the

claimant, is final and conclusive for all purposes.

(c) Settlement procedures. Where the amount paid is over \$500,000, after agreement is reached with counsel or claimants, the procedure is to prepare a settlement recommendation for the approval of the Secretary of the Navy. When settlement has been approved, the voucher required for effecting payment is prepared. The settlement check is then exchanged, in keeping with the commercial practice, for an executed release. In some situations, where the exchange of documents is impracticable, a claimant is requested to forward the executed release by mail, on the understanding that the release does not become effective until the check is received in payment. Claims settled under [10 U.S.C. 7622](#) are paid out of annual Department of Defense appropriations.

(d) Limitation period. The Secretary's settlement authorization is subject to a two-year limitation. This limitation is not extended by the filing of claim nor by negotiations or correspondence. A settlement agreement must be reached before the end of the two-year period. If settlement is not accomplished, then the claimant must file suit under the appropriate statute to avoid the limitation bar. The agreement reached in negotiations must receive the approval of the Secretary of the Navy or his designee, depending on the amount involved, prior to the expiration of the two-year period.

(e) Matters in litigation. When suit is filed, the matter comes within the cognizance of the Department of Justice, and the Secretary of the Navy is no longer able to entertain a claim or to make administrative settlement.

Agency Claims

- Admiralty Tort Claims, 32 CFR § 752.1
- Organization, 32 CFR § 752.2
- Claims against the Navy, 32 CFR § 752.3
- **Affirmative Claims, 32 CFR § 752.4**
- Salvage, 32 CFR § 752.5

32 C.F.R. § 752.4

(a) Settlement authority.

The Navy has the same authority to settle affirmative admiralty claims as it does claims against the Navy. The statute conferring this authorization is codified in 10 U.S.C. 8823, and is the reciprocal of 10 U.S.C. 8822 referred to in 32 CFR § 752.3.

(b) Scope. 10 U.S.C. 8823 is a tort claims-settlement statute.

It is not limited to affirmative claims arising out of collision, but embraces all instances of damage caused by a vessel or floating object to property of the United States under the jurisdiction of the Department of the Navy or for which the Department of the Navy has assumed an obligation to respond. Perhaps the most frequent instance is where a privately owned vessel damages a Navy pier or shore structure. To eliminate any issue of whether the damaging instrumentality was a vessel, the words “or floating object” were included.

(c) Statute of limitation.

The United States is subject to a three-year statute of limitation when it asserts an affirmative claim for money damages grounded in tort. This limitation is subject to the usual exclusions, such as inability to prosecute due to war, unavailability of the “res” or defendant, and certain exemptions from legal process (28 U.S.C. 2415, 2416).

(d) Litigation. **10 U.S.C. 8823 does not apply to any claim where suit is filed.** If the Admiralty and Maritime Law Division is unable to effect settlement, the matter is referred to the Department of Justice for the filing of a complaint against the offending party. Thereafter, as in the case of adverse litigated claims, the Navy has no further authority to effect settlement.

Agency Claims

- Admiralty Tort Claims, 32 CFR § 752.1
- Organization, 32 CFR § 752.2
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- Affirmative Claims, 32 CFR § 752.4
- Salvage, 32 CFR § 752.5

32 C.F.R. § 752.5

(a) Scope.

This section relates to salvage claims against or by the Navy for compensation for towage and salvage services, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the Department of the Navy, or for salvage services rendered by the Department of the Navy. Suits for salvage may be maintained under the Public Vessels Act, and salvage claims are within the Secretary of the Navy's administrative-settlement authority under 10 U.S.C. 8822.

Salvage claims against the Navy are reported to and processed by the Judge Advocate General (Admiralty and Maritime Law Division). Both claims and suits for salvage against the United States are subject to the two-year limitation of the Public Vessels Act and the Navy's settlement authority.

(b) Affirmative claims. Authorization for the settlement of affirmative salvage claims is handled in the first instance by the Assistant Supervisor of Salvage (Admiralty),

USN, Naval Sea Systems Command (SEA OOCL).

Salvage claims are referred to the Admiralty Division only if the Assistant Supervisor of Salvage (Admiralty) is unsuccessful in making collection, see 10 U.S.C. 7365. Any money received in settlement of affirmative salvage claims is credited to appropriations for maintaining salvage facilities by the Navy, pursuant to 10 U.S.C. 7367.

Note: Commanding officers of vessels or installations, or U.S. Government or contract harbor pilots, have no authority to waive salvage fees or claims on behalf of the Navy.

Agency Claims

- Admiralty Tort Claim
 - Secretary of the Navy
 - Navy Judge Advocate General
 - The Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) (Code 11)

The Navy Judge Advocate General's responsible for processing admiralty claims for adjudication by the Secretary of the Navy, or the Secretary's designee, and acts as principal liaison with Department of Justice (DOJ) for admiralty tort cases in litigation.

This responsibility has been delegated to the DAJAG (Admiralty and Maritime Law), OJAG (Code 11).

The primary mission of the Navy's Admiralty and Maritime Law Division is to effect prompt and equitable settlements of admiralty claims, both against and in favor of the United States. The Secretary of the Navy has statutory authority to settle and pay claims not in litigation and has delegated settlement authority to the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

The Division's primary clients are the Secretary of the Navy, the Judge Advocate General, the fleet commanders, the Commandant of the Marine Corps and all Department of the Navy (DoN) activities at sea and ashore. The Division also represents DoN in relations with other agencies, particularly the Departments of Justice, State, Interior, Commerce, Energy and Transportation regarding maritime

matters.

The Admiralty and Maritime Law Division of the Office of the Judge Advocate General is responsible for adjudicating all admiralty tort claims arising from the operation of Department of Navy vessels or otherwise involving the activities of Department of the Navy personnel on navigable waters.

Examples of admiralty claims include those for damage to vessels, piers, dolphins, buoys, fenders, marinas, shore side equipment, and fishing gear. Claims for injury or death include those by ship visitors, ship repairmen, stevedores, contractors, and the passengers and crew of other vessels may also result in admiralty claims.

This office handles claims for damage caused by vessels in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and claims for damage caused by a privately owned vessel to a vessel or property of the Navy (affirmative claims). The Admiralty and Maritime Law Division also handles claims for towage and salvage services rendered to a vessel in the naval service.

Agency Claims

- Policy
 - *“to effect prompt and equitable settlements of admiralty claims*
 - *“both against and in favor of the United States”*
 - *“wherever legal liability exists”*
 - *“and, the matter is not in litigation”*

Policy: The primary mission of the Admiralty and Maritime Law Division is to effect prompt and equitable settlements of admiralty tort claims, both against and in favor of the United States. The settlement procedure has evolved to eliminate the expenses and delays arising out of litigation and to obtain results advantageous to the financial interests of the United States. Where settlements cannot be made, litigation ensues in the Federal Courts. The final test of whether a settlement is justified is the probable result of litigation. Settlements are therefore considered and determined by the probable results of litigation. The policy of the Navy is to effect fair and prompt settlements of admiralty claims wherever legal liability exists.

Agency Claims

- Procedure
 - Claimant has the burden of proof
 - Substantiating information should be included with the claim
 - Claims submitted via mail, fax, or e-mail
 - FTCA Does not toll statute of limitation
 - Assistance to claimants available
 - No requirement to file claim with agency, except . . .
- Extension of Admiralty Jurisdiction Act

Procedure: In filing an admiralty claim, no particular form is required. However, a claim must be in writing and signed by the claimant or the claimant's designated representative. It must state the basis for U.S. Navy responsibility and include a specific claim amount. **The claimant bears the burden of providing evidence from which Navy liability and the full measure of damage can be determined. Therefore, all substantiating information should be included with the claim.** Depending upon the nature of the claim this could include charts, diagrams, photographs, damage survey reports, repair estimates, replacement cost estimates, purchase receipts, fish catch records, and relevant medical/employment records. The claim may be mailed, faxed, or sent as an attachment in an email.

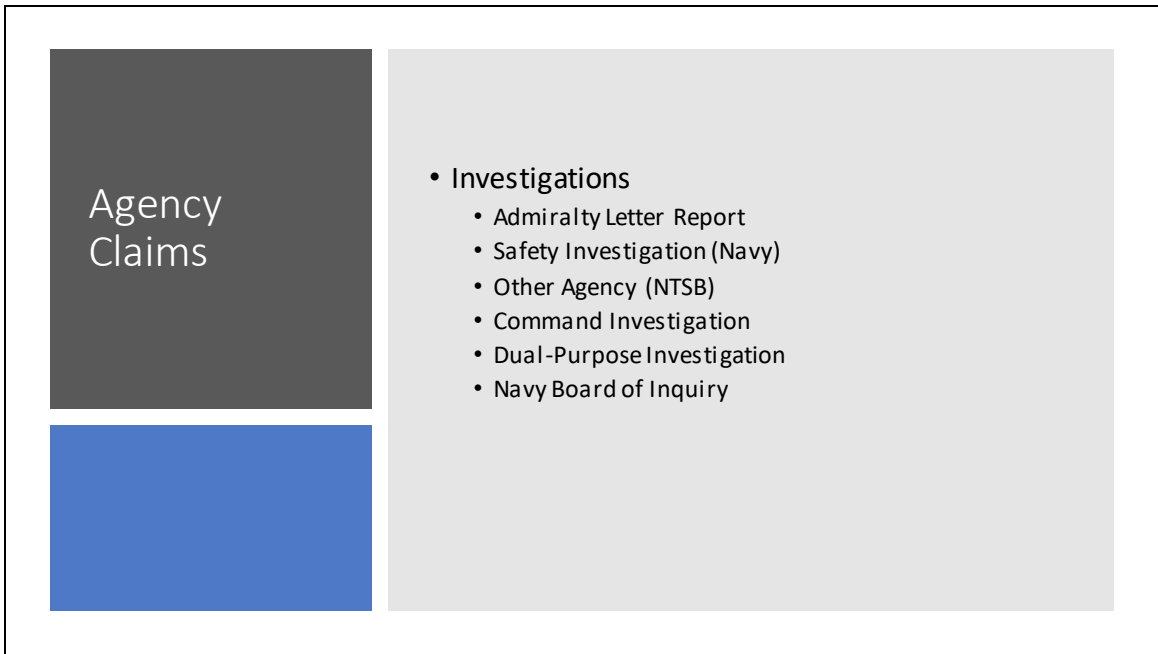
Mailing Address:

Department of the Navy
Office of the Judge Advocate General Admiralty and Maritime Law (Code 11) 1322
Patterson Ave, SE, Suite 3000 Washington Navy Yard, DC 20374
Fax: 202-685-5471
Email (unencrypted): admiralty@navy.mil

Questions may be directed by email or by phone at 202 685-5040. The office is not authorized to provide legal advice regarding the claim, but will assist in the filing process.

JAGMAN 1115(b). Assistance to claimants. OJAG (Code 11) admiralty attorney will advise the individual how to present a claim, the address the notice of claim should be mailed to, and what, if any, evidence is required. An officer or employee of the Government cannot act as agent or attorney for another in the prosecution of any claim against the United States. See 18 U.S.C. § 205. See JAGMAN chapter VII for requests for legal assistance with claims against the United States.

Admiralty Jurisdiction Extension Act. An Administrative claim is required—A civil action described in paragraph may not be brought until the expiration of the 6-month period after the claim has been presented in writing to the agency owning or operating the vessel causing the injury or damage.



Admiralty Letter Report investigation

The precise form of a The Admiralty Letter Report (ALR) is less important than fulfilling the requirement that the circumstances of an incident be completely and promptly documented under the protection of the attorney work- product privilege. This is accomplished by having the report done under the supervision of a Code 11 attorney (or their designee).

The ALR format shall be used when litigation is possible and protection of internal information/decisions from discovery is required. The ALR shall consist, at a minimum, of a letter from the command principally involved in an admiralty incident, addressed to the “Office of the Judge Advocate General (Code 11)”, with the facts of the case stated in narrative form. The ALR shall include as enclosures, unsworn summaries of witness statements (written witness statements shall not be taken, but if a statement is already in existence, it shall be preserved and forwarded with the report), copies of documents, photographs (including negatives), contracts, medical records, and other supporting information.

The report should not include opinions or recommendations and should not be

endorsed by the convening authority or chain-of-command. Instead, the original report and original enclosures shall be forwarded directly (advance copy by E-Mail or FAX) to OJAG (Code 11). The investigating officer shall be appointed, in writing, by the convening authority using the sample format in Appendix A-11-a. A sample ALR is contained in Appendix A-11- b. The information contained in an ALR shall not be disseminated to any individual or organization not directly involved with the conduct of the investigation without prior authorization of OJAG (Code 11). Any unauthorized dissemination may significantly impact the litigation position of the United States.

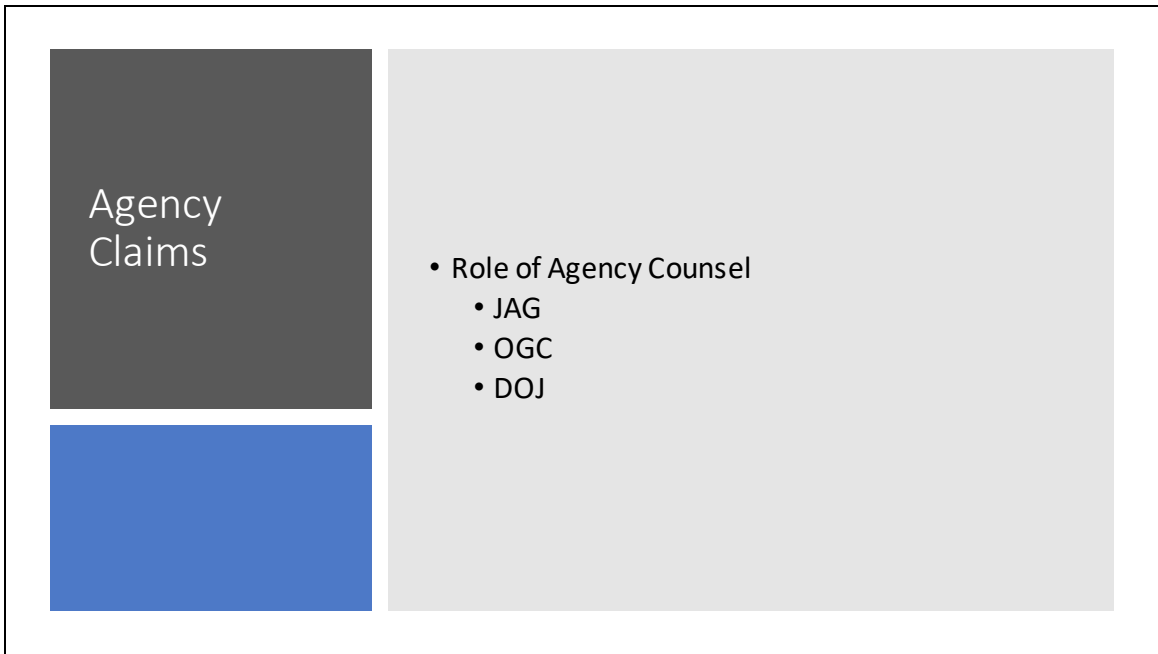
Command or Safety Investigation

For some admiralty incidents, a convening authority may determine that concerns outside of litigation such as safety, operational requirements, or accountability outweigh the desire to protect the Government's interests in internal information/decisions in litigation, or that the probability of litigation is unlikely. Under these circumstances, the command investigation format discussed in Chapter II or the Mishap investigation formats are appropriate. An advance copy of any command or safety investigation involving an admiralty incident shall be forwarded to OJAG (Code 11) as soon as possible, with endorsements to follow when completed.

Dual-Purpose Investigation

When a convening authority is faced with an incident involving concerns of safety, operational requirements, or accountability and OJAG (Code 11) also anticipates litigation, a Dual-Purpose investigation may be used to protect privileged information while allowing the investigation to be used for other official purposes (e.g., disciplinary action, safety). The Dual-Purpose investigation report shall adhere to the procedures set forth for an ALR whenever possible. However, the Dual-Purpose investigation report may include opinions or recommendations and may be endorsed by the convening authority or chain-of-command if appropriate, but those portions may be subject to discovery in litigation or release under the Freedom of Information Act. The initial report shall be forwarded to OJAG (Code 11) with endorsements to follow when completed.

JAGMAN Appendix A-11-c contains a sample Dual-Purpose investigation appointing letter. Note, a mishap investigation under the safety programs cannot be combined with a dual- purpose investigation.



Agency Council

Agency counsel is typically a military officer with little (or no) training in admiralty law. The role of agency counsel is to function as a conduit between on-scene commanders, operational units, surveyors, investigators, claimants, opposing counsel, and other agencies. Except for major incidents, the agency counsel is person responsible for collecting and preserving evidence. His/her other major role is to assist attorneys from the Department of Justice. The DOJ Aviation, Space & Admiralty Litigation Section of the Torts Branch handles aviation, space, and maritime cases and claims.

In its admiralty practice, DOJ represents the United States in the government’s role as ship-owner, regulator, and protector of the nation’s waterways and maritime resources. Its admiralty litigation concerns collisions involving U.S. vessels and warships, grounding of vessels while using U.S. government-produced charts, challenges to the boarding of vessels on the high seas during national security and drug interdiction activities, and maritime-based pollution incidents, including vessel oil spills. Affirmative admiralty actions seek compensation for the loss of government cargo; damage to locks, dams, and natural resources; and the costs associated with

maritime pollution cleanups.

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Questions

Contact
Information

Theron R. Korsak, Esq.
Commander, JAGC, U.S. Navy (Ret.)
theron.korsak@me.com
202-227-9870