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Admiralty Law

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"This is a maritime case about a train wreck" was the opening metaphor employed by U.S. Supreme Court Justice Sandra Day O'Connor in a recent decision. In that contract dispute involving a cargo of machinery damaged from a derailed train, admiralty jurisdiction was found to apply.¹

In May 2006, Judge Robert W. Sweet of the U.S. District Court for the Southern District of New York authored a maritime tort decision about a plane wreck.

Constitutional Grant

These cases demonstrate the desire for uniform laws relating to modern forms of transportation and not just traditional maritime activities. It used to be that maritime law had narrower application. But, the reach of admiralty law now tends to reach high and low and even genuine salty flavor can affect admiralty jurisdiction in a maritime contract dispute.² The U.S. Constitution grants admiralty jurisdiction to federal courts. See Art. III, §2, Cl. 1, see also 28 USC §1333(1). This constitutional grant has formed the basis for the Supreme Court to encourage maritime laws to operate uniformly across the country.³ Indeed, Congress has extended admiralty and maritime jurisdiction to damage or injury ashore when caused by a vessel on navigable waters. Admiralty Extension Act, 46 USC App §740. With admiralty jurisdiction comes the application of substantive maritime law.⁴

Judge Sweet recently took up the issue of whether admiralty jurisdiction existed for claims arising from the tragic accident in *Air Crash at Belle Harbor, N.Y. on November 12, 2001*, 2006 U.S. Dist. LEXIS 27387, 2006 A.M.C. 1340 (SDNY 2006). The case also dealt with the question of which wrongful death remedies applied--state or federal maritime. This article will focus on the issue of admiralty jurisdiction.

American Airlines Flight 587 crashed on land in New York during a flight from New York's JFK Airport to the Dominican Republic on Nov. 12, 2001. All 260 persons on board died and five residents of Belle Harbor on the ground were killed. The plane reached an altitude of about 2,500 feet over Jamaica Bay, when less than two minutes after takeoff, the aircraft's vertical stabilizer and rudder separated and fell into the bay. The plane crashed about 17 seconds later into the residential neighborhood of Belle Harbor on Rockaway Peninsula. In 2004, the National Transportation Safety Board (NTSB) concluded that separation of the stabilizer occurred after the plane hit wake turbulence from another departing aircraft. In a maneuver known as "rudder reversal," the pilot attempted to counter the effects of the turbulence by repeatedly moving the plane's rudder from side to side. According to the NTSB, this created stress on the stabilizer that exceeded design limits and caused it to break off in flight.⁵

Flight 587 Suits

Numerous lawsuits were filed in various jurisdictions. The Judicial Panel on Multidistrict Litigation transferred and consolidated all actions to the Southern District of New York pursuant to 28 USC §1407 for pretrial purposes. In a motion apparently designed to limit exposure for damages, defendants, Airbus Industrie GIE, American Airlines Inc. and AMR Corp., moved for a determination that New York law applied to the claims by passenger, crew, and ground cases. Claiming this was an admiralty case, plaintiffs argued for the application of maritime law.

Judge Sweet recognized that deciding which law governs litigation involving aircraft disasters has been a vexing issue for courts. One federal court stated that the choice-of-law problems in air crash litigation cry out for federal statutory resolution and urged Congress to enact uniform federal tort law to apply to liability and damages in commercial airline disasters.⁶ This desire for uniformity in aircraft disaster litigation was one of the principles Judge Sweet considered in determining which law to apply in the *Belle Harbor* case. Another important consideration was that the same standards should apply to all claimants in this and other air crash cases in order to promote fairness and certainty of resolution. *Air Crash at Belle Harbor* at *13.

Traditional Maritime Activity

The major aviation decision that first tested the waters of admiralty jurisdiction was the 1972 case *Executive Jet Aviation Inc. v. City of Cleveland*.⁷ During take-off, the plane struck a flock of birds and crashed into navigable waters of Lake Erie. On these facts, the U.S. Supreme Court determined that there was no admiralty jurisdiction, but the decision paved the way for the extension of admiralty's jurisdiction over aviation tort claims. The court suggested that the location of the accident is not sufficient in itself to determine whether such jurisdiction exists, but that it would be more consistent with the history and purpose of admiralty law to also require that the wrong bear a significant relationship to a traditional maritime activity.

As a result, a new test for admiralty tort jurisdiction was born. It required not only the locality of the wrong be on navigable waters of the United States but that there also be a connection or nexus of the function at issue to a traditional maritime activity.

This became accepted as the "locality plus" test among practitioners. Thus, where an aircraft is considered to be "performing a function traditionally performed by water-borne

vessels," the connection or nexus test may be satisfied.⁸

The stage was therefore set for the U.S. Supreme Court in 1986 to apply this standard and find admiralty jurisdiction in *Offshore Logistics Inc. v. Tallentire*, a case involving a helicopter crash at sea when transporting workers to an offshore oil platform.⁹ The U.S. Supreme Court has acknowledged that a primary purpose of admiralty jurisdiction is protecting maritime commerce and this sometimes requires jurisdiction to apply beyond actual commercial maritime activity. See e.g., *Foremost Ins. Co. v. Richardson*, 457 US 668, 674-75 (1982).

Since *Executive Jet*, courts have regularly applied the two-pronged test of locality and nexus. A party seeking to invoke federal admiralty jurisdiction over a tort claim must satisfy both conditions.

In 1995, the Supreme Court further refined the nexus prong to require two distinct inquiries: (i) the court must assess the "general features" of the type of incident involved to determine whether the incident has a potentially disruptive impact on maritime commerce, and (ii) the court must determine whether the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity.¹⁰ The "potentially disruptive impact" prong carries more judicial discretion than the second. It is not as difficult to determine whether an activity has a relationship with "traditional maritime activity." In *Tallentire*, for example, it was no problem to find that the transporting of persons across the ocean bears a significant relationship to maritime activity because it is a function traditionally performed by a water-borne vessel.¹¹ Indeed, since *Executive Jet*, as noted by Judge Sweet, federal courts have concluded nearly unanimously that transoceanic or island voyages that, but for air travel, would have been conducted by sea have a significant relationship to maritime activity.¹²

On the other hand, whether an incident has a potentially disruptive impact on maritime commerce is fact-sensitive and may not be limited to actual facts, but includes potential facts as well. For example, the Supreme Court said in *Foremost Ins. Co. v. Richardson*, infra, that an aircraft sinking in the water "could" create a hazard to navigation of commercial vessels in the vicinity.

In *Air Crash at Belle Harbor*, defendants suggested that all aviation cases governed by maritime law involved a crash in navigable waters but that Flight 587 did not. Evaluating the first prong of the nexus test, the court noted that the aircraft's vertical stabilizer plummeted into Jamaica Bay from an altitude of approximately 2,500 feet. Based upon this, Judge Sweet found that the "general features" of the incident could be described fairly as a large piece of aircraft sinking in navigable waters. The court determined that because the inquiry looks to the general features of the incident, it was of no consequence whether Jamaica Bay was seldom if ever used for commercial marine traffic. This description satisfied the potentially disruptive impact piece of the nexus test. As to the second prong, Judge Sweet noted that Flight 587 was scheduled to make a 1,500-mile transoceanic flight from New York City to the Dominican Republic and, therefore, there could be no question that, but for the development of air travel, this trip would have been conducted by a water-borne vessel, a traditional maritime activity.

Defendants had argued that the maritime nexus test is met only if a plane crashes in the high seas, far from land. The court determined, however, that both prongs of the test were satisfied because (1) the accident fell within a class of incidents that have potential disruptive effects on maritime commerce, and (2) the activity giving rise to the accident was a transoceanic flight that bears a significant relationship to traditional maritime activity.

Locality

This accident involved contacts with both land and water, making the "locality" test difficult to resolve. The vertical stabilizer landed in Jamaica Bay but the aircraft crashed on land in Belle Harbor. However, citing *Executive Jet*, Judge Sweet noted that determining jurisdiction based solely on the location of the crash would lead to unacceptably anomalous results; for instance, where two planes collide in midair where one crashed on land and the other on navigable waters. 2006 U.S. Dist. LEXIS at *38. Judge Sweet found the "maritime location" of the separation of the vertical stabilizer on a 1,500-mile journey mostly over navigable waters to be significant, thereby satisfying the location test.

Conclusion

Practitioners should be aware of the possibility that admiralty jurisdiction and admiralty law may apply to torts and contracts relating to commerce and transportation not necessarily purely maritime in nature.

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Endnotes:

1. *Norfolk S. Ry. Co. v. James N. Kirby, Pty Ltd.*, 543 U.S. 14, 125 S.Ct. 385 (2004).
2. *Demette v. Falcon Drilling Co.*, 280 F.3d 492, 501 (5th Cir. 2002); *Hoda v. Rowan Companies*, 419 F.3d 379 (5th Cir. 2005); See also, *Folksamerica Reinsurance Co. v. Clean Water of New York*, 413 F.3d 307, 311 (2d. Cir. 2005).
3. *Norfolk S. Ry. Co.*, 543 U.S. at 28.
4. *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 1999, 206 (1996).
5. *Air Crash at Belle Harbor*, 2006 U.S. Dist. LEXIS at *9.
6. *In re Air Crash Disaster at Stapleton Intern. Airport, Denver, Colo.*, 720 F. Supp. 1445, 1455 (D. Colorado 1988) rev'd on other grounds *Johnson v. Continental Airlines Corp.*, 964 F.2d 1059 (10th Cir. 1992).
7. 409 U.S. 249 (1972).

8. *Executive Jet*, 409 U.S. at 271.

9. *Offshore Logistics Inc. v. Tallentire*, 477 U.S. 207 (1986).

10. *Jerome B. Grubart Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995), 1995 A.M.C. 913 (1995).

11. 477 U.S. at 219.

12. *Air Crash at Belle Harbor* at *26-27.