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Published biannually by the Admiralty Law Society of St. John's University School of Law to bring to the attention of practitioners and other interested persons the highlights of recent court decisions in the admiralty field. The case summaries presented herein may not discuss all issues addressed by the various courts. Therefore, readers are advised to consult original case sources.

**BOTH THE LOCATION AND THE MARITIME NEXUS NECESSARY FOR
ADMIRALTY JURISDICTION WERE PRESENT**

The locality prong of the test for admiralty jurisdiction under the SAA was satisfied when both the victim and the device, which allegedly caused his drowning, were located in navigable waters. A vessel did not have to be involved in the commission of the tort in order for the prong to be satisfied

Ayers v. United States
277 F.3d 821 (6th Cir. 2002)
(Decided January 17, 2002)

Plaintiff-Appellant Edna Ayers ("Ayers"), as Administratrix of the estate of Roy L. Hardin, appeals from a decision by the district court to dismiss her action filed under the Suits in Admiralty Act ("SAA") and the Federal Torts Claims Act ("FTCA") against the United States, alleging that the negligent operation of Lock and Dam No. 2 on the Kentucky River led to the drowning death of Ayer's son, Roy Hardin.

Lock and Dam No. 2, located at mile thirty-one on the Kentucky River, consists of a lock to allow vessel passage on the river and a dam to maintain the level of navigable water. The Lock and Dam is owned and operated by the United States through its agency the U.S. Army Corps of Engineers ("Corps"). The area downstream of the Lock and Dam is a popular swimming area and on August 3, 1997, Hardin was swimming about one-hundred yards from the downstream discharge area of Lock No.2, when the lock master began "locking through" two pleasure craft. "Locking through" entails opening the downstream discharge end of Lock No. 2, resulting in turbulence from the sudden discharge of water. Plaintiff alleges that the turbulent water caused

Hardin's drowning and that the lock master negligently failed to warn others of his intent to engage Lock No. 2.

On June 28, 1999, Ayers filed an administrative complaint for wrongful death with the Corps pursuant to the FTCA. The claim was improperly filed and on July 29, 1999, Ayers filed a properly authorized administrative claim notifying the Corps that the six-month period for its response began running from the date of the new claim. There was no final disposition of the administrative claim and on February 11, 2000, Ayers filed a complaint in the United States District Court for the Eastern District of Kentucky, alleging an action arising under the FTCA. Ayers later amended her complaint on June 7, 2000 to include an action arising out of the FTCA, or in the alternative, an action under the SAA.

The United States filed a motion to dismiss for lack of jurisdiction and the district court granted the motion, holding that the court had admiralty jurisdiction over the action under the SAA and therefore the suit was barred by the two-year statute of limitations in 46 U.S.C.App. § 745. Ayers' appeal to the Sixth Circuit Court of Appeals followed.

The main issue was whether the court heard this case pursuant to its admiralty jurisdiction under the SAA. The Supreme Court recently addressed the issue of admiralty jurisdiction in *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995). In *Grubart* the Court found that admiralty jurisdiction existed over claims concerning the flooding of buildings in Chicago, which resulted from an accident with a crane situated on a barge on the Chicago River. The Court applied the *Sisson* test stating, "a party seeking to invoke federal admiralty jurisdiction . . . over a tort claim must satisfy conditions of both location and of connection with maritime activity." *Id.* at 534.

The location element of the test requires that the tort occur on navigable water or that the injury suffered on land was caused by a vessel on navigable water. The connection prong, or nexus, requires that the incident have a potentially disruptive impact on maritime commerce and that the general character of the activity giving rise to the incident show a substantial relationship to traditional maritime activity.

The locality prong of the test for admiralty jurisdiction was satisfied as both Hardin and the device, which allegedly caused his drowning, were located in navigable waters. The court

rejected Ayers' argument that a vessel be involved in the commission of the tort in order for the location requirement to be satisfied, as the plain language of the statute requires only that a private person be involved. Appellant also contended that the tort was land-based because the lock master was on land when he activated the mechanism to "lock through." The court refused to engage in this type of analysis, as it would have been too mechanical an application of the locality test.

The court also found that the nexus prong of the test for admiralty jurisdiction was satisfied because the drowning resulted in a potential interruption of maritime commercial activity due to the rescue and recovery effort necessary to recover the body and because the operation of a lock is a traditional maritime activity. Since both the location and nexus mandates for admiralty jurisdiction were satisfied the court found that the district court was correct in determining the appellant's remedy under its admiralty jurisdiction and the SAA.

An action under the SAA is subject to a two-year statute of limitations and if the action is not brought within this time period it will be barred. The court found that the Appellant's complaint had not complied with the statute of limitations and was barred because the drowning occurred on August 3, 1997, the complaint was filed on February 11, 2000 and amended on June 7, 2000. The court rejected the Appellant's equitable tolling argument because it is well-established that the filing of an administrative claim under the FTCA does not toll the limitations period for an action under the SAA. The Court of Appeals for the Sixth Circuit affirmed the district court decision to dismiss the Appellant's action for lack of jurisdiction.

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