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Determination of Admiralty Jurisdiction for Products Liability Actions

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DETERMINATION OF ADMIRALTY JURISDICTION FOR PRODUCTS LIABILITY ACTIONS

It is well established that products liability actions may be maintained within admiralty jurisdiction.[1] The plaintiff may derive several benefits from having such an action in admiralty jurisdiction. For example, he has available a federal forum without any requirement of diversity of citizenship or minimum amount in controversy.[2] In addition, whether the action is in federal or state court, it will be governed by the general maritime law.[3] One advantage of the

[1] Pan-Alaska Fisheries, Inc. v. Marine Constr. & Design Co., 565 F.2d 1129, 1134 (9th Cir. 1977); JIG the Third Corp. v. Puritan Marine Ins. Underwriters Corp., 519 F.2d 171, 175 (5th Cir. 1975); Lindsay v. McDonnell Douglas Aircraft Corp., 460 F.2d 631, 635 (8th Cir. 1972); Schaeffer v. Michigan-Ohio Navigation Co., 416 F.2d 217, 221 (6th Cir. 1969); Best v. Honeywell, Inc., 491 F. Supp. 269, 271-72 (D. Conn. 1980); Anglo Eastern Bulkships Ltd. v. Ameron, Inc., 1979 A.M.C. 459, 461-63 (S.D.N.Y. 1978), *motion for reargument denied*, 460 F. Supp. 1212, 1979 A.M.C. 469 (S.D.N.Y. 1978).

[2] 28 U.S.C. § 1333 (1976). That statute provides in relevant part that "[t]he district courts shall have original jurisdiction, exclusive of the courts of the States, of: (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." 28 U.S.C. § 1333 (1976).

The availability of the federal forum stems from the provision in article III of the Constitution that the judicial power of the United States "shall extend . . . to all Cases of admiralty and maritime Jurisdiction . . . ." U.S. CONST. art. III, § 2, cl. 2. Decisions interpreting the congressional implementation of that constitutional grant of jurisdiction have estabished that certain maritime causes of action can be brought only in the federal district courts under admiralty jurisdiciton, but that others can be brought (1) in state courts, (2) in federal district courts under diversity jurisdiction, or (3) in federal district courts under admiralty jurisdiction. Leon v. Galceran, 78 U.S. (11 Wall.) 185, 188 (1870). The federal district courts have exclusive original jurisdiction of certain maritime causes of action created by federal statute and of the traditional maritime action *in rem* against a vessel. *Id.* For actions *in personam* — suits against a named natural or corporate person, asserting a personal liability — the plaintiff has the choice of state court, federal district court under diversity jurisdiction — should there be diversity and the requisite amount in controversy — or federal district court under admiralty jurisdiction. *See id.* An action against the manufacturer of a product is of the latter *in personam* variety. Thus, the plaintiff in such an action has a choice of forums.

[3] Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 409 (1953). Concerning the effect of choice of admiralty law as opposed to law of a state, *see* Van Harville v. Johns-Manville Products Corp., No. 78-642-H (D. Ala. Sept. 27, 1979), in which defendant preferred application of Alabama law because of its stringent statute of limitations and doctrine of contributory negligence. The court pointed out that the choice of law problem was a two-edged sword for the plaintiffs, because punitive damages are almost never recognized in admiralty. *Id.*

Although the plaintiff does have the opportunity to bring his action in federal or state court, that choice of forum does not affect, or in theory should not affect, the choice of applicable law. Garrett v. Moore-McCormack Co., 317 U.S. 238, 243-45 (1942); Chelentis v. Luckenbach S.S. Co., Inc., 247 U.S. 372, 384 (1918). The Constitution contains no explicit indication as to the substantive law to be applied to cases of admiralty and maritime jurisdiction. G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY 45 (2d ed. 1975). Decisions of the Supreme Court have held that the substantive law to be applied consists of two components: (1) the body of traditional rules and concepts governing maritime matters adopted by the courts from European authorities and subsequently adapted to fit the needs of this country, and (2) acts of Congress altering and supplementing the maritime law. The Lottawanna, 88 U.S. (21 Wall.) 558, 574-77 (1874). If a federal maritime rule of law — judge-made or statutory — exists that is applicable to an issue arising in a maritime action, it must be applied whether the action is litigated in state or federal court. Garrett v. Moore-McCormack Co., 317 U.S. 239, 245 (1942).

application of that law is that the timeliness of the action will be determined, not by a statute of limitations, but by the doctrine of laches.[4] Under that doctrine, there is no fixed period of time after which an action is barred.[5] The court looks at the particular circumstances presented by each case.[6]

In order to obtain the benefits of the federal forum and of the application of maritime law, the plaintiff must establish that admiralty jurisdiction has been properly invoked. The jurisdictional test for products liability cases, as for all maritime tort cases, has changed within the last ten years. For more than 150 years, the courts had made a determination of admiralty jurisdiction over torts[7] by the so-called locality test. The test had been enunciated in *De Lovio v. Boit*[8] by Justice Story, an Associate Justice of the Supreme Court, rendering a decision on circuit in 1815.[9] Under that test, the mere locality of a tort — the occurrence of harm upon the navigable waters — was sufficient to bring it within admiralty jurisdiction.[10] By dictum in *The Plymouth*,[11] a case decided in 1865, the Supreme Court of the United States affirmed the validity of such a test, stating that "[e]very species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters, is of admiralty

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[4] The Key City, 81 U.S. (14 Wall.) 653, 660 (1871).

[5] *Id.*

[6] *Id.* State statutes of limitaitons for analogous situations are considered but are not conclusive. Czaplicki v. The Hoegh Silvercloud, 351 U.S. 525, 533 (1956). The determination should be made after consideration of all the circumstances bearing on the issue. *Id.*

For the suit to be barred by laches, there must have been both unreasonable delay in the filing of the claim and consequent prejudice to the party against whom suit is brought. Akers v. State Marine Lines, Inc., 344 F.2d 217, 220 (5th Cir. 1965); *see* Gutierrez v. Waterman S.S. Corp., 373 U.S. 206, 215 (1963). An example of prejudice would be the loss of witnesses. *See* Akers v. State Marine Lines, Inc., 344 F.2d 217, 221 (5th Cir. 1964). The emphasis is increasingly on the extent of the prejudice rather than on the delay. Fidelity & Cas. Co. of N.Y. v. C/B Mr. Kim, 345 F.2d 45, 50 (5th Cir. 1965).

The emphasis on prejudice as an element necessary for the barring of an action by laches emerged during the 1960's, when district courts found their dismissals on the ground of unexcused delay reversed and the cases remanded for further proceedings on the question whether the delay had been prejudicial to the defendant. G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY 772-73 (2d ed. 1975). The distinct shift in the handling of the laches problem may be viewed as connected with the Supreme Court's vast expansion of seamen's remedies, which had been initiated during the 1940's. *Id.* at 773.

[7] In admiralty, an action for the negligent design and/or manufacture of a product is a tort action. *See, e.g.*, Moser v. Texas Trailer Corp., 623 F.2d 1006, 1013 (5th Cir. 1980) *and* Best v. Honeywell, Inc., 491 F. Supp. 269, 272 (D. Conn. 1980). *See generally* Comment, *Maritime Products Liability: Tort and Contract Considerations Affecting Jurisdiction*, 52 TEMPLE L.Q. 283 (1979).

[8] 7 F. Cas. 418, 444 (C.C.D. Mass. 1815) (No. 3,776).

[9] D. ROBERTSON, ADMIRALTY AND FEDERALISM 28 n.3 (1970).

De Lovio v. Boit held that policies of marine insurance are within the admiralty and maritime jurisdiction of the United States. 7 F. Cas. 418, 444 (C.C.D. Mass. 1815) (No. 3,776). The Supreme Court praised Justice Story's opinion highly in Insurance Co. v. Dunham, 78 U.S. (11 Wall.) 1, 35 (1870).

[10] 7 F. Cas. at 444.

[11] 70 U.S. (3 Wall.) 20 (1865). The Court held that when a vessel lying at a wharf caught fire and the fire spread to buildings on the wharf, an action by the owners of the buildings against the owners of the vessel did not lie within admiralty jurisdiction. *Id.* at 35, 37.

cognizance."[12] Despite some doubts as to whether there ought to be a maritime nexus, that dictum was taken literally by the lower courts.[13]

The test derived from *De Lovio v. Boit* and *The Plymouth* requiring merely occurrence of harm upon navigable waters to bring a tort action within admiralty jurisdiction, was modified in 1972 by the Supreme Court's decision in *Executive Jet Aviation, Inc. v. City of Cleveland.*[14] From that decision lower federal courts have derived a locality-plus test, one requiring maritime locality of harm plus a significant connection with traditional maritime activity.[15] That test has been held applicable to all maritime tort actions,[16] including products liability actions,[17] although the decision did not involve products liability.[18] Application of the locality-plus test, however, can lead to questionable results. For example, in 1980, the Fifth Circuit in *Sperry Rand Corporation v. Radio Corporation of America*,[19] extended admiralty jurisdiction to an action against the manufacturer of small component parts used in almost every type of electronic industry.[20] The parts in question had not been manufactured specifically for incorporation in marine systems, but they allegedly had caused damage to a ship on navigable waters.[21]

This note will address the issues and problems presented by the locality-plus test for admiralty jurisdiction used by the courts in products liability cases. Since that test is derived from *Executive Jet*, the note first will examine the holding of the Court in that case, and will focus on the principles underlying that holding. Next, it will analyze several federal court cases purporting to apply that test in the maritime products liability area. They will be examined for compliance with the test of *Executive Jet* and with the purposes for which admiralty jurisdiction exists. It will be submitted that any inclusion of locality as a factor in the test for admiralty jurisdiction over products liability cases leads to

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[12] *Id.* at 36.

[13] McCune, *Maritime Products Liability*, 18 HASTINGS L.J. 831, 834 (1967).

See, e.g., Weinstein v. Eastern Airlines, Inc., 316 F.2d 758, 761 (3d Cir. 1963), *cert. denied*, 375 U.S. 940 (1963) (airplane crash on navigable waters); Davis v. City of Jacksonville Beach, 251 F. Supp. 327, 328 (M.D. Fla. 1965) (collision between surfboard and swimmer); Madole v. Johnson, 241 F. Supp. 379, 380 (W.D. La. 1965) (motorboat accident on lake).

[14] 409 U.S. 249 (1972).

[15] *See, e.g.*, Moser v. Texas Trailer Corp., 623 F.2d 1006, 1009 (5th Cir. 1980); Kelly v. United States, 531 F.2d 1144, 1146 (2d Cir. 1976); T.J. Falgout Boats, Inc. v. United States, 508 F.2d 855, 856 (9th Cir. 1974); St. Hilaire Moye v. Henderson, 496 F.2d 973, 977 (8th Cir. 1974); Kelly v. Smith, 485 F.2d 520, 525 (5th Cir. 1973), *cert. denied sub nom.*, Chicot Land Co. v. Kelly, 416 U.S. 969 (1974); Gilmore v. Witschorek, 411 F. Supp. 491, 492 (E.D. Ill. 1976); Clinton Bd. of Park Comm'rs v. Claussen, 410 F. Supp. 320, 322-23 (S.D. Iowa 1976); Hammill v. Olympic Airways, S.A., 398 F. Supp. 829, 832-33 (D.D.C. 1975); Kayfetz v. Walker, 404 F. Supp. 75, 76 (D. Conn. 1975); Rubin v. Power Authority, 356 F. Supp. 1169, 1170 (W.D.N.Y. 1973).

[16] See cases cited at note 15 *supra*.

[17] *See, e.g.*, Moser v. Texas Trailer Corp., 623 F.2d 1006, 1009 (5th Cir. 1980).

[18] *See* 409 U.S. 249 (1972).

[19] 618 F.2d 319 (5th Cir. 1980).

[20] *Id.* at 321, 322.

[21] *Id.*

inconsistent and anomalous results. For that reason, a new approach will be suggested. This note will propose a test based solely on the presence of significant connection with traditional maritime activity, so that the test may best serve the purposes for which admiralty jurisdiction exists.

I. THE *EXECUTIVE JET* TEST FOR THE DETERMINATION OF ADMIRALTY JURISDICTION OVER TORT ACTIONS

Executive Jet Aviation, Inc. v. City of Cleveland[22] arose from the crash of a jet aircraft.[23] The planned flight was to have been over land from Cleveland, Ohio, to Portland, Maine, and thence to White Plains, New York.[24] The plane struck a flock of seagulls as it was taking off from a Cleveland airport adjacent to Lake Erie.[25] As a result, the plane lost its power, crashed, and ultimately sank in the navigable waters of Lake Erie, a short distance from the airport.[26] The owners of the airplane brought a suit in federal court under admiralty jurisdiction for property damage to the aircraft as a result of negligence.[27] Defendants were the airport manager, the air traffic controller, and the City of Cleveland, which owned and operated the airport.[28] Plaintiffs asserted that the defendants had failed through negligence to keep the runway free of the birds or to warn of the birds' presence.[29]

The district court held that the action was not within admiralty jurisdiction.[30] The court stated that the alleged negligence toward the plane had happened while it was over the land.[31] Thus, the locality where the wrong occurred was not over navigable waters.[32] Furthermore, the district court, relying on Sixth Circuit precedent,[33] held that even if the locality had been maritime, the wrong bore no relationship to maritime service, navigation, or commerce.[34]

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[22] 409 U.S. 249 (1972).

[23] *Id.* at 250.

[24] *Id.*

[25] *Id.* The seagulls had been on the runway before the plane took off. *Id.* As the plane took off, the seagulls rose into the airspace directly ahead of it. *Id.*

[26] *Id.* The almost total loss of power was caused by ingestion of the birds into the jet engines. *Id.* There were no personal injuries, but the plane itself was a total loss. *Id.*

[27] *Id.* at 250-51.

[28] *Id.*

[29] *Id.* at 251.

[30] *Id.*

[31] *Id.*

[32] *Id.* at 251-52.

[33] Chapman v. City of Grosse Pointe Farms, 385 F.2d 962 (6th Cir. 1967). The plaintiff in *Chapman* had sued in federal court under admiralty jurisdiction for injuries sustained when he dove off a pier into approximately eighteen inches of water. *Id.* at 963. The court said that the occurrence of the tort on navigable waters was immaterial to a meaningful invocation of admiralty jurisdiction. *Id.* at 966. The court held that in addition to locality there must be some relationship between the wrong and maritime service, navigation, or commerce. *Id.*

[34] 409 U.S. at 251.

The Court of Appeals for the Sixth Circuit affirmed, but on the ground that the alleged tort had taken place over the land.[35] That court did not find it necessary to consider the question of maritime relationship.[36]

The United States Supreme Court granted certiorari to address the question whether the action lay within federal admiralty jurisdiction.[37] The unanimous holding[38] of the *Executive Jet* Court was that, in the absence of a federal statute to the contrary, there is no federal admiralty jurisdiction over aviation tort claims arising from flights by land-based aircraft between points within the continental United States.[39] This holding has been interpreted as requiring maritime locality plus a significant relationship between the injury and traditional maritime activity in order to establish admiralty jurisdiction over a tort action.[40]

As the first reason for its holding that significant relationship with traditional maritime activity is required, the Court stated that the requirement is "consistent with the history and purpose of admiralty."[41] That purpose is to handle the problems of vessels moving on the waterways.[42] It is to address such problems that the body of maritime law has developed.[43] That body of law has

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[35] Executive Jet Aviation, Inc. v. City of Cleveland, 448 F.2d 151, 154 (6th Cir. 1971).

[36] *Id.*

[37] 409 U.S. at 252.

[38] Justice Stewart delivered the opinion. *Id.* at 250.

[39] 409 U.S. at 274. As an example of legislation to the contrary, the Court mentioned the Death on the High Seas Act, 46 U.S.C. §§ 761-767. Section 761 provides:

> Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person or corporation which would have been liable if death had not ensued.

This statute gives federal admiralty courts jurisdiction over suits for wrongful death arising out of aircraft crashes into high seas beyond one marine league of shore. *Executive Jet*, 409 U.S. at 274 n.26.

[40] *E.g.*, Sperry Rand Corp. v. Radio Corp. of America, 618 F.2d 319 (5th Cir. 1980); JIG the Third Corp. v. Puritan Marine Ins. Underwriters Corp., 519 F.2d 171 (5th Cir. 1975); Higginbotham v. Mobil Oil Corp., 545 F.2d 422 (5th Cir. 1977), *rev'd on other grounds*, 436 U.S. 618 (1978); and Hubschman v. Antilles Airboats, Inc., 440 F. Supp. 828 (D.V.I. 1977); all discussed in text at notes 71-145 *infra*.

[41] 409 U.S. at 268.

[42] *Id.* at 269. The Court stated:

> [The law of admiralty] deals with navigational rules — rules that govern the manner and direction those vessels may rightly move upon the water. When a collision occurs or a ship founders at sea, the law of admiralty looks to those rules to determine fault, liability, and all other questions that may arise from such a catastrophe. Through long experience, the law of the sea knows how to determine whether a particular ship is seaworthy, and it knows the nature of maintenance and cure. It is concerned with maritime liens, the general average, captures and prizes, limitation of liability, cargo damage, and claims for salvage.

Id. at 270.

[43] *Id.* at 269-70.

rules and concepts especially tailored to the operation of ships.[44] The Court pointed out that a plane crash, almost without exception, is caused by factors unrelated to the sea.[45] Such causes may be "pilot error, defective design or manufacture of airframe or engine, error of a traffic controller at an airport, or some other cause . . . ."[46] Thus, the determination of liability in such cases, said the Court, will be based on concepts other than those of the law of admiralty.[47]

As a second reason for its holding that maritime nexus is required, the *Executive Jet* Court expressed a concern for the independence of state government.[48] That concern should prevent the federal courts from extending admiralty jurisdiction beyond certain limits.[49] The requirement of significant relationship to traditional maritime activity provides such a limit.[50] When there is no such relationship, state courts may apply their familiar concepts of state tort law without producing any effect on maritime endeavors.[51]

A third reason for the Court's holding was a reluctance to take action more properly left to Congress.[52] If there is a need for uniformity of substantive and procedural law governing aviation tort cases, Congress under the commerce clause[53] may enact such legislation.[54] Offering an example of congressional activity with respect to aircraft and admiralty, the Court pointed out that Congress has acted to exempt all aircraft from conformity with United States navigation and shipping laws.[55] Furthermore, the Court's discussion indicates that Congress has acted to extend admiralty jurisdiction to wrongful death actions arising from airplane accidents on the high seas.[56] In like manner, according to the Court, Congress could address any perceived need for uniformity of aviation tort law.[57] The Court could not effectively arrive at such uniformity by upholding admiralty jurisdiction over those cases involving plane crashes on the navigable waters.[58] Therefore, it declined to find admiralty jurisdiction in *Executive Jet*.[59]

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[44] *Id.* at 270.

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.* at 272-73.

[49] *Id.* The Court referred to its 1971 decision in Victory Carriers, Inc. v. Law, 404 U.S. 202 (1971), which had observed that the Court should be reluctant to expand admiralty jurisdiction by simultaneously limiting the reach of state law. 404 U.S. at 12.

[50] *See* 409 U.S. at 272-74.

[51] *Id.* at 283.

[52] *See id.* at 273-74.

[53] U.S. CONST. art. I, § 8, cl. 3.

[54] 409 U.S. at 273-74.

[55] *Id.* at 262. The Court was referring to the Federal Aviation Act of 1958, 49 U.S.C. § 1509(a) (1976). 409 U.S. at 262 n.12.

[56] *Id.* at 262. The Court was referring to the Death on the High Seas Act, 46 U.S.C. §§ 761-767 (1976). 409 U.S. at 262.

[57] *Id.* at 273-74.

[58] *Id.*

[59] *Id.* at 274.

Looking at the facts of the case before it, the *Executive Jet* Court found no significant relationship with traditional maritime activity.[60] The case involved an event befalling a land-based aircraft flying between points in the continental United States.[61] Such an event, said the Court, is not related to navigation and commerce on navigable waters.[62] The Court rejected the argument that the similarities between the dangers of planes crashing on the water and the dangers of ships sinking create a maritime relationship in this case.[63]

The Court's dicta did not, however, go so far as to indicate that all aviational matters should be outside admiralty jurisdiction.[64] The Court explicitly refrained from deciding whether an aviation tort could ever bear a sufficient relationship to traditional maritime activity to come within admiralty jurisdiction in the absence of legislation.[65] The Court stated that "[i]t could be argued" that a hypothetical plane crashing in mid-Atlantic en route from New York to London might even give rise to a tort action within admiralty jurisdiction.[66] According to the Court, the plane's performance of a function traditionally performed by waterborne vessels could conceivably constitute a significant relationship to traditional maritime activity.[67]

The Court thus refused to find admiralty jurisdition over a tort case in which the injury had occurred on navigable waters. The refusal was due to the absence of a connection with traditional maritime activity and to the Court's reluctance to expand admiralty jurisdiction by correspondingly decreasing the role of state courts and state law.

II. APPLICATION OF THE *EXECUTIVE JET* TEST IN MARITIME PRODUCTS LIABILITY CASES

Executive Jet was not a products liability case, but it has been regarded by most courts as the source of a jurisdictional test for maritime torts in general.[68] Therefore, courts deciding maritime products liability cases have made their determination of jurisdiction on the basis of whatever guidance was furnished by *Executive Jet*, not only in the context of aviational accidents,[69] but in that of

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[60] *Id.* at 272.

[61] *Id.*

[62] *Id.*

[63] *Id.* at 268-69.

[64] *See id.* at 271.

[65] *Id.*

[66] *Id.*

[67] *Id.* Another example of a maritime function being performed by aircraft may be found in the facts of Hornsby v. Fish Meal Co., 431 F.2d 865 (5th Cir. 1970), which involved a mid-air collision over navigable waters between two light aircraft used in locating schools of fish. 409 U.S. at 271-72 n.22.

[68] See note 15 *supra.*

[69] *See, e.g.*, Higginbotham v. Mobil Oil Corp., 545 F.2d 422 (5th Cir. 1977), *rev'd on other grounds*, 436 U.S. 618 (1978); Hubschman v. Antilles Airboats, Inc., 440 F. Supp. 828 (D.V.I. 1977); both discussed in text at notes 106-45 *infra.*

vessels moving on the waterways as well.[70] The following subsections of this note will discuss application of *Executive Jet* by the courts in products liability cases.

A. *Cases Involving Sinking of Vessels*

In 1975 the Fifth Circuit Court of Appeals decided the jurisdictional question in *JIG the Third Corporation v. Puritan Marine Insurance Corporation*[71] in light of the guidance furnished by *Executive Jet*. The plaintiffs in *JIG the Third* had owned a shrimpboat that sank in the Gulf of Mexico,[72] as a result of severe leaking caused by a defective shaft assembly.[73] After the sinking, the owners sued the manufacturer for defective design and construction of the boat's shaft assembly.[74] The suit advanced three theories of recovery.[75] The first theory, breach of warranty, sounded in contract.[76] The second theory, negligent design and construction, and the third theory, strict liability, both sounded in tort.[77] The district court entered judgment for the plaintiff on the second theory after a jury found that the sinking had resulted from a defect in the design or construction of the boat due to defendant's negligence.[78]

On appeal, the Fifth Circuit prefaced its discussion of the issue of liability by addressing the question of whether the tort, if any, was maritime in nature.[79] The court reasoned that when an ocean-going vessel sinks in the Gulf of Mexico and the sinking is allegedly tortious, there is maritime locality plus a significant relationship to traditional maritime activity.[80] The tort, therefore, in accordance with *Executive Jet*, must be maritime in nature, although the conduct complained of may have been faulty design or construction and may have occurred ashore.[81] The court did not consider it necessary to engage in any analysis to arrive at its finding of admiralty jurisdiction.[82]

In *JIG the Third*, the defect complained of had been one in a boat's shaft assembly.[83] In contrast, *Sperry Rand Corporation v. Radio Corporation of America*,[84] decided by the Fifth Circuit Court of Appeals in 1980, involved a defect in a component part used in every aspect of electronic equipment.[85] Sperry Rand,

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[70] *See, e.g.*, JIG the Third Corp. v. Puritan Marine Ins. Underwriters Corp., 519 F.2d 171 (5th Cir. 1975), discussed in text at notes 71-82 *infra*; Sperry Rand Corp. v. Radio Corp. of America, 618 F.2d 319 (5th Cir. 1980), discussed in text at notes 84-105 *infra*.

[71] 519 F.2d 171 (5th Cir. 1975), *cert. denied*, 424 U.S. 954 (1976).

[72] *Id.* at 173.

[73] *Id.* at 173 n.2.

[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] *Id.*

[78] *Id.*

[79] *Id.* at 174.

[80] *Id.*

[81] *Id.*

[82] *See id.*

[83] *Id.* at 173

[84] 618 F.2d 319 (5th Cir. 1980).

[85] *Id.* at 321.

the plaintiff in the action, had manufactured a gyro-pilot steering system using component parts produced by the defendants.[86] After the grounding of the ship in which the steering system had been installed, the vessel owners filed suit against Sperry Rand and its insurer Liberty Mutual Insurance Company.[87] Those parties reached a settlement out of court prior to trial.[88] Accordingly, the vessel owners assigned and subrogated all of their rights of recovery to Sperry and Liberty.[89] Sperry and Liberty then brought a products liability action in federal district court for economic loss against the Radio Corporation of America and the other manufacturers of component parts.[90] The plaintiffs based jurisdiction of their suit solely on the court's admiralty empowerment.[91]

The district court dismissed the case for lack of admiralty jurisdiction.[92] It stated that the manufacture of small component parts, not specifically manufactured for incorporation in marine systems, lacked any relationship to traditional maritime activity.[93] The district court held that the action therefore failed to meet the locality-plus test of *Executive Jet*.[94]

When the plaintiffs appealed, asserting that the action was within admiralty jurisdiction,[95] the defendants countered with two arguments.[96] First, they contended that Sperry's suit against them involved no maritime activity, but was merely an action seeking indemnity or contribution based on products liability principles.[97] They did concede, however, that in an action against Sperry by the owner of the vessel that had run aground, there would be admiralty jurisdiction since Sperry Rand had manufactured a uniquely maritime product.[98]

Secondly, the defendants stated that a finding of admiralty jurisdiction would be inconsistent with the *Executive Jet* Court's expressed desire to restrict that jurisdiction.[99] *Executive Jet* was predicated on the view that admiralty should limit itself to the special problems presented by vessels moving upon the waterways, and not extend itself to areas where familiar concepts of state tort law can be applied without producing any effect on maritime endeavors.[100]

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[86] *Id.* The allegedly defective parts included a triac semi-conductor rectifier manufactured by R.C.A., a circuit amplifier manufactured by Texas Instruments, and a switch manufactured by Electro-Switch. *Id.* at 320 n.1.

[87] *Id.* at 320.

[88] *Id.*

[89] *Id.*

[90] *Id.* On appeal, Sperry Rand argued that jurisdiction existed in its own behalf as subrogee to the vessel owners' rights *and* in its own right as purchaser of the component parts. *Id.* The appeals court saw no controlling significance in distinguishing either position for purposes of admiralty jurisdiction. *Id.* at 320 n.2.

[91] *Id.* at 320. Plaintiffs encountered problems with diversity jurisdiction, not specified in the decision. *See id.* at 320.

[92] *Id.*

[93] *Id.* at 320-21.

[94] *Id.* at 321.

[95] *Id.*

[96] *Id.*

[97] *Id.* See text at notes 87-89 *supra*.

[98] 618 F.2d at 321.

[99] *Id.*

[100] See text at notes 41-59 *supra*.

The court in *Sperry Rand* rejected both arguments put forth by the defendants.[101] With respect to the first argument, the court noted the defendants' inability to cite even one case where the *Executive Jet* requirement of significant relationship to traditional maritime activity was not satisfied by the sinking of, or inflicting of damage upon, a marine vessel on navigable water.[102] Likewise, the court was not persuaded by defendants' argument that a finding of admiralty jurisdiction in the case would expand that jurisdiction to encompass the manufacture of any product that eventually found its way into a maritime situation, no matter how unrelated in function or distribution, and would thereby defeat the locality-plus test of *Executive Jet*.[103] The rejection of that argument was due to the court's reluctance to reach a decision that would preclude the litigation in federal court of all possible claims arising from the sinking of a ship.[104] The court stated that its finding would best serve the purpose of admiralty jurisdiction — namely, to protect the national interest in uniformity of law and remedies for those facing the hazards of waterborne transportation.[105]

In summary, in both *JIG the Third* and *Sperry Rand*, the court reasoned that if a marine vessel suffers harm on navigable waters, there is admiralty jurisdiction for a products liability action. According to those cases, the sinking of or damage to the vessel while it is on navigable waters satisfies the locality portion of the *Executive Jet* test. Further, they state that harm to a vessel provides the significant relationship to traditional maritime activity called for by the "plus" portion of the *Executive Jet* test. Not only is it irrelevant to a finding of admiralty jurisdiction that the design or manufacture complained of took place on land, but after *Sperry Rand*, it is also irrelevant that the design or manufacture was not that of a maritime product.

B. *Accidents Involving Aviation*

Cases arising from aviational accidents likewise raise the question whether admiralty jurisdiction is appropriate for actions involving design or manufacture of non-maritime products.[106] The following subsection examines two such cases.

The first, *Hubschman v. Antilles Airboats, Inc.*,[107] was decided by the Federal District Court for the Virgin Islands in 1977.[108] A finding of admiralty jurisdiction in that case was especially important to the plaintiff, because it would allow him to bring an action after the expiration of the local statute of limita-

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[101] 618 F.2d at 321-22.

[102] *Id.* at 321.

[103] *Id.* at 321-22.

[104] *Id.* at 322.

[105] *Id.*, quoting Kelly v. Smith, 485 F.2d 520, 526 (5th Cir. 1973).

[106] *See, e.g.*, Higginbotham v. Mobil Oil Corp., 545 F.2d 422 (5th Cir. 1977), *rev'd on other grounds*, 436 U.S. 618 (1978), discussed in text at notes 133-43 *infra*, *and* Hubschman v. Antilles Airboats, Inc., 440 F. Supp. 828 (D.V.I. 1977), discussed in text at notes 107-32 *infra*.

[107] 440 F. Supp. 828 (D.V.I. 1977).

[108] *Id.*

tions[109] and to expand the remedies available to him beyond those provided by workman's compensation.[110] In *Hubschman*, the plaintiff was a sea pilot in the employ of defendant Antilles Airboats, Inc., which leased seaplanes from co-defendant Caribbean Flying Boats, Inc.[111] The seaplane that plaintiff flew was a Grumman "goose," a twin engine amphibian manufactured some forty years ago.[112] In June of 1971, plaintiff was pilot of a flight with ten passsengers between St. Thomas, Virgin Islands, and Fajardo, Puerto Rico.[113] Ten to fifteen minutes into the flight, both engines stopped dead without any warning.[114] The plaintiff brought the plane down on the water, a few miles northeast of the Puerto Rican island of Culebra.[115] It broke apart somewhere in the nose area, and after remaining afloat five to ten minutes, went down to the bottom.[116] Its pilot the plaintiff, as well as eight of the ten passengers, survived.[117]

As a result of the accident, plaintiff suffered severe permanent injuries.[118] Under the laws of the Virgin Islands, he filed a claim for Workman's Compensation which was adjudicated and paid.[119] In addition to that claim, plaintiff in June of 1974[120] filed in the federal district court for the Virgin Islands[121] a complaint against Antilles Airboats, Inc., and Caribbean Flying Boats, Inc.[122] The complaint invoked admiralty jurisdiction[123] and sought, *inter alia*, damages under a products liability theory from the lessor of the plane.[124]

A finding of admiralty jurisdiction was necessary to the success of the plaintiff's claim.[125] As the court pointed out, if the plaintiff's claim had not been brought under the umbrella of admiralty, the affirmative defense of the statute of limitations would have barred the action.[126] The Virgin Islands

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[109] *See id.* at 841 n.18.
[110] *Id.* at 833.
[111] *Id.* at 831.
[112] *Id.*
[113] *Id.* at 832.
[114] *Id.*
[115] *Id.*
[116] *Id.* at 833.
[117] *Id.*
[118] *Id.*
[119] *Id.*
[120] *Id.* at 834.
[121] *Id.* at 828.
[122] *Id.* at 831.
[123] *Id.* at 833.
[124] *Id.* at 846. Plaintiff also sought an award for maintenance and cure, and his wife sought damages for loss of consortium. *Id.* at 833.
[125] *See id.* at 841 n.18.
[126] The court referred to V.I. CODE ANN., tit. v, § 31(5)A. 440 F. Supp. at 841. That statute provides in relevant part:

> § 31. Civil actions shall only be commenced within the periods prescribed below after the cause of action shall have accrued, except when, in special cases, a different limitation is prescribed by statute:
>
> (5) *Two years* —
>
> (A) An action for libel, slander, assault, battery, seduction, false imprisonment, or for any injury to the person or rights of another not arising on con-

statute sets out a two-year limitation period for personal injury actions.[127] Under admiralty law, however, the timeliness of the action would be determined by the doctrine of laches.[128]

In order to determine whether the action was within admiralty jurisdiction and therefore to be governed by the concept of laches, the court looked to *Executive Jet* and its progeny.[129] The court determined that the case met the locality-plus criteria and was thus within admiralty jurisdiction.[130] The locality requirement was satisfied since the plane broke apart while on the water, and the plaintiff received his injuries either while he was in the floating plane or after he had been ejected from it into the water.[131] The court further concluded that there was a maritime nexus, because a seaplane is different from conventional aircraft, and because the flight was to be almost entirely over international waters.[132]

In the second aviational case that this note discusses, *Higginbotham v. Mobil Oil Corporation*,[133] the representatives of the pilot and passengers killed in the crash of a helicopter in the Gulf of Mexico brought suit *inter alia* against the helicopter manufacturer under a products liability theory.[134] The accident had occurred over the high seas[135] about a hundred miles south of Morgan City, Louisiana, while the helicopter had been transporting passengers from an offshore oil rig.[136]

The United States District Court for the Western District of Louisiana looked for locality and traditional maritime activity to determine the existence of admiralty jurisdiction.[137] The occurrence of the accident on the high seas, the court said, satisfied the locality test.[138] Furthermore, the court stated that because the helicopter was performing the ordinary functions of a crewboat, it was engaged in a maritime activity.[139] The activity of the helicopter performing the functions of a crewboat was distinguished from the activity of the aircraft flying between points in the continental United States in *Executive Jet*.[140] Thus, the two requirements of the locality-plus test were satisfied.[141] The Fifth Circuit Court of Appeals found that the district court's conclusion was correct under

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tract and not herein especially enumerated . . . .

Id.

[127] *Id.*

[128] *Id.*

[129] 440 F. Supp. at 839.

[130] *Id.* at 840.

[131] *Id.*

[132] *Id.*

[133] Higginbotham v. Mobil Oil Corp., 357 F. Supp. 1164 (W.D. La. 1973), *aff'd in relevant part*, 545 F.2d 422 (5th Cir. 1977), *rev'd on other grounds*, 436 U.S. 618 (1978).

[134] 357 F. Supp. at 1166, 1167.

[135] *Id.* at 1167.

[136] *Id.* at 1166.

[137] *Id.* at 1167.

[138] *Id.*

[139] *Id.*

[140] *Id.*

[141] *Id.*

Executive Jet.[142] It expressed the view that even if the aircraft initially took off from or was normally based within the continental United States, admiralty jurisdiction "is not automatically ousted."[143]

Both *Higginbotham* and *Hubschman* indicate that if a plane crashes on navigable waters while it is performing a function traditionally assigned to ships or boats, then an action alleging defective design or manufacture of the plane or its parts is within admiralty jurisdiction.[144] That finding of jurisdiction is due to the courts' application of a locality-plus test derived from the holding in *Executive Jet*.[145]

III. Inadequacies of the Locality-Plus Test

As a result of the courts' use and interpretation of the locality-plus test, *Sperry Rand*, *Hubschman*, and *Higginbotham* were all brought within admiralty jurisdiction, although they might have been addressed more appropriately by the law of the states. This section of the note will set forth the view that the use of the locality-plus test may lead to undesirable results for two reasons. First, locality is not always an accurate indicator of whether an action should be within admiralty jurisdiction. Second, the courts' interpretation of the meaning of maritime nexus has been excessively broad.

The inclusion of locality as a part of the jurisdicitonal test presents the disadvantage that the occurrence of injury on water rather than on land is often fortuitous. This element of chance is especially apparent in products liability litigation. Many products can cause harm either on or off the navigable waters. If the purpose of the resulting litigation is to answer the question whether there was a defect in the design or manufacture of the product, then the locality — land or water — of the injury would seem to be irrelevant to the question. As the Supreme Court pointed out in *Executive Jet*, it was not to address such general questions of a non-maritime nature that admiralty jurisdiction and law have developed.[146]

The requirement of maritime locality can actually hinder an appropriate exercise of admiralty jurisdiction. The number of times that courts have had to make exceptions to the locality test, when the tort had no maritime locality but did bear a relationship to maritime activity, is an indictment of that element of the test.[147] For example, courts have allowed within admiralty jurisdiction actions by seamen for injuries sustained wholly on land, when those injuries were

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[142] 545 F.2d at 424 n.1.

[143] *Id.* The court made reference to Dearborn Marine Serv., Inc. v. Chambers & Kennedy, 499 F.2d 263, 272 n.17 (5th Cir. 1974) and Roberts v. United States, 498 F.2d 520, 523-24 (9th Cir. 1974).

[144] See text at notes 107-43 *supra*.

[145] *Id.*

[146] *See* 409 U.S. at 270. Speaking of aviational accidents, the Court said that factual and conceptual inquiries regarding causes of injury such as the "defective design or manufacture of airframe or engine" are unfamiliar to the law of admiralty. *Id.*

[147] *Id.* at 259.

caused by defects in the ship or its gear.[148] The inappropriateness of locality as a factor in the test is shown further by the necessity Congress has perceived to pass legislation to bring within admiralty jurisdiction some tort actions involving injury to persons or property on land. For example, the Extension of Admiralty Jurisdiction Act, passed in 1948,[149] provides that the admiralty jurisdiction of the United States shall extend to injuries caused by a vessel on navigable waters "notwithstanding that such damage or injury be done or consummated on land."[150] The act was passed specifically to overrule cases such as *The Plymouth*[151] that would have excluded such cases arising from damage by ships to land structures.[152] Thus, non-maritime locality by itself should not bar exercise of admiralty jurisdiction.

With respect to the second portion of the test, the courts have been correct in stating that they should find a significant relationship with traditional maritime activity in order to exercise admiralty jurisdiction. Yet, in some cases they have been willing to expand to an excessive extent their understanding of what the term encompasses. To state, as the court in *Sperry* did, that any allegation of harm to a ship on navigable waters is enough to create a significant relationship with maritime activity,[153] leads to a conclusion that any defect in design or manufacture of a product that harms a vessel is within admiralty jurisdiction. This conclusion is too sweeping. Under such reasoning, a defect in the design or manufacture of an electric frying pan could give rise to an admiralty action if the wiring of the pan caused a fire damaging a ship. An action arising from that sort of circumstance does not need a federal forum or the application of a special body of federal maritime law. It would be fully within the competence and expertise of a state court to try such a case applying its own body of law. Likewise, the *Sperry* case would have been fully within the competence of a state court.

In regard to aviation cases such as *Hubschman*, it is not clear why the performance by an instrumentality other than a waterborne vessel of a function traditionally performed by waterborne vessels creates a significant relationship to traditional maritime activity. If freight of a type that would at one time have been transported between two cities by river transport today travels by truck or railroad, no one would seriously suggest that an accident involving such a truck would give rise to an action within admiralty jurisdiction, even if by some chance the truck were to crash in a river. The truck's movements are not directly related to the waterborne shipping business that the law of admiralty has been developed to regulate.

Thus, the courts in some instances have applied a locality-plus test to ex-

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[148] Gutierrez v. Waterman S.S. Corp., 373 U.S. 206, 214-15 (1963). *See also* Strika v. Netherlands Ministry of Traffic, 185 F.2d 555 (5th Cir. 1950).

[149] 46 U.S.C. § 740 (1976).

[150] *Id.*

[151] 70 U.S. (3 Wall.) 20 (1865). See note 11 *supra*.

[152] *Executive Jet*, 409 U.S. at 260.

[153] See text at notes 84-105 *supra*.

pand the reach of admiralty jurisdiction. In doing so, they have not sufficiently taken into account whether such expansion is in accordance with the purposes underlying admiralty jurisdiction. Regulation of the shipping industry is close to the conduct of foreign affairs. There is a need for a uniform body of laws, consistent with the laws of other maritime nations for the conduct of the shipping business.[154] Yet matters not directly and immediately connected with navigation or commerce by water should be excluded.[155] The test suggested in the following section is intended to include only those causes of action directly related to waterborne shipping.

IV. SUGGESTIONS FOR REFORM

The test for admiralty jurisdiction over tort actions should be based solely on the presence of a significant relationship to traditional maritime activity. In the area of products liability litigation, both the injury and the design or manufacture causing the injury should bear a significant relationship to traditional maritime activity. The requirement that the injury bear such a relationship would exclude most personal injuries to individuals other than seamen. Injuries to pleasure boaters and swimmers, even if caused by defective boats, would be governed by state law in state courts. The requirement that design or manufacture bear a maritime relationship would exclude even injuries to seamen if caused by an instrumentality not connected with maritime endeavor. Thus a seaman injured by a defective electric razor would have to conduct his litigation in state court under state law. Those manufacturers producing uniquely maritime products could expect the possibility of involvement in actions within admiralty jurisdiciton. Other manufacturers, such as those of aircraft, of component parts used generally in a variety of industries, and of miscellaneous non-maritime products would not face the possibility of such involvement. The element of fortuitousness found in some of the cases discussed in this note would be removed. Those maritime plaintiffs to whom admiralty jurisdiction has traditionally given a choice of federal or state forum would still have that choice. But those to whom the happenstance of a defective product's injury to a person on the water gave such a choice would not. Actions that would not benefit from special expertise of judges experienced in maritime matters would fall within the latter excluded category.

This test can be applied in full compliance with the Supreme Court's decision in *Executive Jet*. Although most lower federal courts addressing the issue have interpreted *Executive Jet* as instituting a locality-plus test instead of the locality test, that decision, which is highly critical of the locality test, can also

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[154] *See* Richards v. Blake Builders Supply, Inc., 528 F.2d 745, 747 (4th Cir. 1975).

[155] *See* Thames Towboat Co. v. The Schooner "Francis McDonald," 254 U.S. 242, 244-48 (1920) (contracts for the construction of ships have traditionally been excluded from admiralty jurisdiction because they are not directly and immediately connected with navigation or commerce by water).

be interpreted as simply abolishing the requirement of locality.[156] *Executive Jet* does not itself explicitly advocate a locality-plus test. The decision does state a conclusion by the Court "that maritime locality alone is not a sufficient predicate for admiralty jurisdiction in aviation tort cases."[157] Yet nowhere in its opinion does the Court state that locality is a necessary element. In fact, the Court was highly critical of reliance on locality as a factor determinative of admiralty jurisdiction.[158] The Court pointed out that there has existed a recognition that "in determining whether there is admiralty jurisdiciton over . . . torts, reliance on the relationship of the wrong to traditional maritime activity is often more sensible and more consonant with the purposes of maritime law than is a purely mechanical application of the locality test."[159] Furthermore, the Court did not present a general definition of significant relationship to traditional maritime activity.[160] Thus, application of the definition of that relationship submitted here with respect to products liability cases would be consistent with the letter and spirit of *Executive Jet*.

CONCLUSION

For the determination of admiralty jurisdiction over products liability actions, courts have used a locality-plus test. That test requires maritime locality of harm, plus a significant relationship to traditional maritime activity. Courts have applied and interpreted the test so as to include within admiralty jurisdiction actions involving defects in non-maritime products.

The test proposed in this note is one based solely on the presence of a significant relationship to traditional maritime activity. Thus, the element of fortuitousness would be removed from this area of products liability litigation. In that area, the test should be whether the injury and the design or manufacture complained of bear a significant relationship to traditional maritime activity.

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[156] Robertson, *Injuries to Marine Petroleum Workers: A Plea for Radical Simplification*, 55 TEX. L. REV. 973, 1009-10 (1977). *Cf.* Verrett v. Offshore Crews, Inc., 332 So. 2d 292, 298 (La. App. 1976) (*Verrett* court stating that *Executive Jet* had downplayed the importance of locality as a factor in determining the existence of admiralty jurisdiction).

[157] 409 U.S. at 261.

[158] *Id.* at 255-61.

[159] *Id.* at 261.

[160] *See id.* at 268-74.