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ADMIRALTY JURISDICTION OVER PLEASURE CRAFT TORTS

The use of watercraft for recreational purposes has expanded dramatically in modern times. Where the operation of pleasure craft is upon the navigable waters of the United States within the territorial boundaries of a state the question has arisen whether tort claims arising from such operation are maritime claims within federal admiralty jurisdiction or merely state law causes of action. If these claims are maritime in nature the substantive federal maritime law, rather than state tort law, will govern the issues regardless of the forum. The law in this area is unsettled. The Supreme Court has enunciated only minimal guidelines for coping with the issues involved and these have proven insufficient and perhaps unsatisfactory. The lower federal courts have been unable even to agree on the relevant policy considerations which ultimately will underlie the rules of law necessary to settle the issues. Thus the policy considerations adopted by the federal courts to determine the maritime nature of tort claims is at this point crucial to the resolution of choice-of-law issues in pleasure craft litigation. Following the Supreme Court's most recent attempt to provide guidance on the extent of federal admiralty jurisdiction vis-à-vis state law jurisdiction in *Executive Jet Aviation, Inc. v. City of Cleveland,* a pronounced difference of opinion has developed among the lower federal courts.

1. For example, in 1960 there were 294,000 recreational motor boats (both inboard and outboard) sold in the United States as compared with 495,000 sold in 1974. In 1960 there were then 5,800,000 recreational boat motors in use, whereas in 1974 the number had increased to 7,595,000. See 1975 Statistical Abstract of the United States 215. The above statistics do not, of course, take into account the increase in the number of sailing craft.

2. "Navigable waters" include the high seas, ports and harbors connected with the high seas, the Great Lakes, and all the rivers and lakes in the United States which are in fact navigable in interstate or foreign commerce, regardless of their status as salt or fresh waters, or their natural or artificial nature, or whether they come within state boundaries. See G. Gilmore & C. Black, The Law of Admiralty 31–33 (2d ed. 1975) [hereinafter cited as Gilmore & Black].

3. In personam actions against a vessel owner, in tort or contract, may be brought in either federal or state court, pursuant to the “saving to suitors” clause of the Judiciary Act of 1789 (which has since been codified, in a slightly varied form, as 28 U.S.C. § 1333 (1970)), but any such maritime claim must be decided under the applicable doctrines of maritime law rather than under state law. See Gilmore & Black, supra note 2, at §§ 1–13.

4. It must be stressed at the outset that the federal maritime law applicable to claims coming within admiralty jurisdiction is a substantive body of doctrines derived from both federal statutes and the common law. See Gilmore & Black, supra note 2, at 1–2. Thus any decision to extend admiralty jurisdiction to a class of claims formerly recognized as within state jurisdiction entails not only an alteration of forum, but also requires that an entirely different body of substantive law be applied to those claims.

as to the maritime nature of tort claims arising from pleasure craft operation. This comment is intended to put this conflict into perspective by presenting the opposing positions and attempting to clarify the issues. Some resolution of those issues should then become possible.

For well over a century federal courts in the United States generally have assumed that tort claims are maritime in nature when the tort occurs upon navigable water, so that the locality of the tort has been the primary determinant of the applicability of federal admiralty jurisdiction and general maritime law.\(^6\) Relying primarily on the authority of the Supreme Court's decision in *The Plymouth*\(^7\) which found no tort to be maritime unless its "substance and consummation" were on water,\(^8\) the lower courts have consistently held\(^9\) that, if a tort occurs\(^10\) on navigable waters, claims for injuries

\(^6\) The locality over which admiralty jurisdiction was properly extended was initially limited to tidal waters. See, e.g., Waring v. Clarke, 46 U.S. (5 How.) 441 (1847); The Thomas Jefferson, 23 U.S. (10 Wheat.) 428 (1825). The locality eventually came to include all waters navigable in interstate and foreign commerce, even if non-tidal in nature. See text accompanying notes 24 & 25 infra. Those courts which found the locality test insufficient in determining the maritime nature of tort claims prior to 1972 were not primarily concerned with pleasure craft tort claims.

In more recent times there has been considerable expansion of admiralty tort jurisdiction inland by means of the Admiralty Jurisdiction Extension Act, 46 U.S.C. § 740 (1970), which provides that

[t]he admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

It is clear from the legislative history of the Act that it was intended as a limited exception to the locality rule, to be applied primarily in those cases where a vessel on navigable water causes damage to a land structure. See 1948 U.S. CODE CONG. Serv. 1898–1904.

Admiralty jurisdiction over contract claims in the United States was never thought to be limited by locality. Admiralty jurisdiction "extends over all contracts (wheresoever they may be made or executed, or whatsoever may be the form of the stipulations) which relate to the navigation, business or commerce of the sea." De Lovio v. Boit, 7 F. Cas. 418, 444, No. 3776 (C.C.D. Mass. 1815).

\(^7\) 70 U.S. (3 Wall.) 20 (1866) (admiralty jurisdiction was not extended to claims arising from a fire which spread from a vessel on navigable waters to a warehouse on shore as the damage to the warehouse was completed on land).

\(^8\) Id. at 34–36.


\(^10\) Determining where a tort "occurs" for purposes of the locality test has produced some problems. Compare, Minnie v. Port Huron Terminal Co., 295 U.S. 647 (1935) (longshoreman's cause of action held within admiralty jurisdiction where he was knocked into navigable water from vessel's deck after he was struck by a hoist), with T. Smith & Son, Inc. v. Taylor, 276 U.S. 179 (1928) (longshoreman's cause of action held not to be within admiralty jurisdiction where longshoreman was knocked into navigable water from the pier by a cargo sling). See also Executive Jet Aviation,
to person or property arising from the tort may be heard in federal court under the general maritime law. So long as the large majority of tort actions brought in federal court under the maritime law involved claims from the shipping industry, no major problems were encountered with locality as the sole jurisdictional test.

Modern developments in the area of pleasure craft operation have served to initiate a process of examination by the lower federal courts of the sufficiency of locality as a theoretical basis for the exercise of admiralty jurisdiction over tort claims. The Fourth Circuit Court of Appeals has expressed substantial doubt whether the legitimate functions and purposes of admiralty jurisdiction and the separate body of federal maritime law are compatible with local interests in pleasure craft operation. According to the Fourth Circuit, the application of maritime law to pleasure craft torts may tend to abrogate these interests. The Eighth and Ninth Circuit Courts of Appeals have taken a contrary view, expressing satisfaction that the application of maritime law to pleasure crafts is fully appropriate in light of what these courts consider to be the traditional concerns of maritime law. The remaining circuits have either taken a middle ground position or have not directly confronted the issue as a policy matter.

Background

Article III, section two of the Constitution of the United States extends the "judicial power of the United States" to "all cases of admiralty and maritime jurisdiction." The debates with respect to this particular portion of section two, both in the Constitutional Convention and elsewhere, shed very little light on what the Framers intended by the word "jurisdiction." Inc. v. City of Cleveland, 448 F.2d 151 (6th Cir. 1971) (because plane lost power over land due to defendant's allegedly negligent omission, the tort occurred on land even though the plane crashed in navigable waters). Under the locality test, the primary criterion as to where a tort "occurred" has been that "[t]he substance and consummation of the occurrence which gave rise to the cause of action took place on land." T. Smith & Son, Inc. v. Taylor, 276 U.S. 179, 182 (1928). Cf. Note, 47 Tul. L. Rev. 1143 (1974).

11. The view of the legitimate functions and purposes of the admiralty jurisdiction is that its basic raison d'etre is to provide a special industry court for commercial maritime interests. See text accompanying note 53 infra. Gilmore and Black have also endorsed this view. See Gilmore & Black, supra note 2, at 30.

12. The basic difference between the view of the Eighth and Ninth Circuits and that of the Fourth Circuit appears to be a belief by the former circuits that admiralty jurisdiction rightfully extends to a broader range of interests than just those of maritime commerce. See text accompanying notes 88-89 infra.

13. The Courts of Appeals for the First, Fifth, and Sixth Circuits fall primarily in the middle ground area, as does the District Court for the District of Columbia. Their respective positions are discussed in note 102 infra.

14. That the importance of a more definite admiralty clause in Article III was not recognized by the convention is clear from the lack of recorded debate on the subject. See Putnam, How the Federal Courts Were Given Admiralty Jurisdiction, 10 Cornell L.Q. 460, 469-70 (1925). It also appears from the debates preceding the
Congress recognized that this clause was not self-executing, for it granted the federal district courts "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction," with certain exceptions where concurrent jurisdiction was recognized in both state and federal courts. While not clearly indicating what was meant by "jurisdiction," the statute has been consistently construed as granting access to federal courts for all claims under the general maritime law without reference to amount in controversy, diversity of citizenship, or the presence of any "federal question." A question remained, however, as to the basis upon which claims under the general maritime law were to be distinguished from other sorts of claims so as to justify invocation of admiralty jurisdiction.

The first rough attempt at resolving this issue came in *De Lovio v. Boit*. Justice Story there rejected as inappropriate the absolute rule of locality which had restricted the British Court of Admiralty. Under that rule, admiralty tort and contract jurisdiction was limited to claims arising from events occurring on tidal waters. Since the British court was subject to statutes not applicable to the colonies, a different rule seemed appropriate for the newly constituted American courts. Story drew upon the experience of the sea courts of other countries, as well as those of the colonies, in concluding that the federal admiralty jurisdiction comprehends all maritime contracts, torts, and injuries. The latter branch is necessarily bounded by locality; the former extends over all contracts (wheresoever they may be made or executed, or whatsoever may be the form of the stipulations) which relate to the navigation, business, or commerce of the sea.

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enactment of the Judiciary Act of 1789 that, while there was great controversy as to how broad federal jurisdiction should be, no one ever questioned what admiralty jurisdiction was or whether it should be included in the whole range of federal jurisdiction. *See* Warren, *New Light on the History of the Federal Judiciary Act of 1789*, 37 *Harv. L. Rev.* 49, 67, 123 (1923); *see also* H. Friendly, *Federal Jurisdiction: A General View* 10 (1973).


16. Under the original wording of the "saving clause," the Supreme Court found that concurrent jurisdiction existed only where the relief sought was a common law remedy already available in state courts. This was taken to mean that in rem actions based on the "maritime lien" concept could only be brought in federal court, because these actions did not involve common law remedies. *See* The Hine v. Trevor, 71 U.S. (4 Wall.) 555 (1867); The Moses Taylor, 71 U.S. (4 Wall.) 411 (1867). Subsequent rewording of the saving clause in 28 U.S.C. § 1333 (1949) has left this limitation with respect to concurrent state court jurisdiction somewhat in doubt. *See* Gilmore & Black, *supra* note 2, at 39.


18. 7 F. Cas. 418, No. 3776 (C.C.D. Mass. 1815). Justice Story was sitting as a circuit judge.

19. *Id.* at 444.
The result of *De Lovio* was that admiralty jurisdiction over torts remained governed by the actual locality of the tort, while the jurisdictional question with respect to claims based on maritime contracts no longer depended on the locality in which they were made or consummated. Determining admiralty jurisdiction over torts, then, became a question of drawing geographical lines.

The placement of these lines derived primarily from history. Under the British rule the jurisdiction of the British Court of Admiralty was limited to the high seas and tidal waters. As England is an island with few navigable non-tidal waters, this restriction posed only minor problems. The United States, on the other hand, possesses a significant number of navigable, non-tidal bodies of water upon which there exists a large volume of maritime traffic. For some time the Supreme Court limited admiralty jurisdiction to tidal waters, adhering to the English rule. In 1845, however, Congress passed a statute extending admiralty jurisdiction to the Great Lakes. In the *Genesee Chief v. Fitzhugh* the Supreme Court not only held this statute constitutional but also found as a general matter that admiralty jurisdiction subsisted on Lake Ontario and on other navigable bodies of water in the country by virtue of their being navigable in interstate commerce.

The ultimate consequence of these various lines of cases was that, prior to *Executive Jet*, the jurisdiction of the federal courts for tort claims alleging a violation of the general maritime law depended upon the "substance" of the tort taking place on navigable water. This was the so-called "strict locality" test, which the Supreme Court in *Executive Jet* purported to change.

*The Executive Jet Analysis*

*Executive Jet* was the first case in which the Supreme Court directly confronted the locality test of admiralty tort jurisdiction. The Court found the test wanting. The case involved the crash of a private jet airliner...
into the navigable waters of Lake Erie.\textsuperscript{28} The plane was taking off on a flight within the continental United States which would be primarily over land, and the Court considered this fact highly significant in holding that federal admiralty jurisdiction is not properly exercised over aviation torts absent legislation to the contrary.\textsuperscript{29} The Court reasoned that the activity of the plaintiff bore no "significant relationship" to "traditional maritime activity involving navigation and commerce" sufficient to make the jetliner owner's claim "maritime."\textsuperscript{30} This is the \textit{Executive Jet} "maritime nexus" test for the exercise of admiralty jurisdiction, the full meaning of which is still in question.

The Court in \textit{Executive Jet} was not compelled by precedent to apply the locality test, which would dictate a finding of admiralty jurisdiction over the owner's claim,\textsuperscript{31} because none of the Court's prior decisions had expressly endorsed locality as the exclusive determinant for admiralty jurisdiction.\textsuperscript{32} While the Court cited no case of its own where the locality test had been repudiated, it did quote from \textit{Atlantic Transport Co. v. Imbrovek}\textsuperscript{33} to the effect that the exclusivity of the locality test was at least an open question.\textsuperscript{34} Thus the Court was free to avoid an overly "mechanical" application of the locality test even though a majority of the lower federal courts

\begin{itemize}
\item \textsuperscript{28} The owner of the aircraft brought this action for damages in federal court against the City of Cleveland, a federal air traffic controller, and the manager of the airport from which the plane had departed. The owner's theory of liability was that the negligent failure of the respondents either to keep the runway free of seagulls or to warn the pilot of their presence resulted in the total loss of the aircraft when it sank in Lake Erie. The plane went down due to a loss of power resulting from its ingestion of a flock of seagulls flushed from the runway by the noise and vibration of the plane's takeoff. The district court dismissed the complaint for want of admiralty jurisdiction, the only ground of federal jurisdiction asserted by the plaintiff, and the court of appeals affirmed, finding that there was no maritime locality as the tort had "occurred" over land. \textit{Id.} at 250–52.
\item \textsuperscript{29} The court limited this holding to those flights by land-based aircraft between points within the continental United States, as these flights are primarily over land. \textit{Id.} at 274.
\item \textsuperscript{30} \textit{Id.} at 272.
\item \textsuperscript{31} In a case involving a factual situation substantially the same as that presented by \textit{Executive Jet}, the Third Circuit Court of Appeals found a wrongful death claim to be within admiralty jurisdiction by application of the locality test. \textit{See} \textit{Weinstein v. Eastern Airlines, Inc.}, 316 F.2d 758 (3d Cir. 1963).
\item \textsuperscript{32} "Despite the broad language of cases like \textit{The Plymouth}, . . . the fact is that this court has never explicitly held that a maritime locality is the sole test of admiralty tort jurisdiction." 409 U.S. at 258.
\item \textsuperscript{33} 234 U.S. 52 (1914).
\item \textsuperscript{34} The Court found the following passage from \textit{Imbrovek} persuasive:
\begin{quote}
Even if it be assumed that the requirement as to locality in tort cases, while indispensable, is not necessarily exclusive, still in the present case the wrong which was the subject of the suit was, we think, of a maritime nature and hence the District Court, from any point of view, had jurisdiction. . . .
\end{quote}

confronted with the sort of jurisdictional issue present in *Executive Jet* had interpreted *The Plymouth* as foreclosing the issue.\(^5\)

The Court's primary concern in adopting the maritime nexus test in *Executive Jet* was the existence of "perverse and casuistic borderline"\(^3\) situations where admiralty jurisdiction could be invoked under the locality rule, but where the coverage of maritime law would be inappropriate.\(^4\) The Court determined that the locality test, when applied to situations like the one before it, would result in the coverage of maritime law being extended or denied on the basis of entirely fortuitous circumstances wholly unrelated to any distinctively maritime interest.\(^5\) The Court cited instances\(^6\) where Congress and the lower federal courts had found it necessary to expand admiralty jurisdiction beyond the confines of the locality test in order to extend maritime law to obviously maritime tort claims which by chance happened to be consummated on land. In narrowing that jurisdiction so as to exclude some tort claims from admiralty even though they may occur on navigable waters, the Court was following the same principle of applying maritime law only where appropriate.\(^7\)

In its rush to tailor admirality jurisdiction strictly to maritime claims, however, the Court created some serious problems. *Executive Jet* is subject to at least three equally supportable interpretations as to how extensively the new maritime nexus test reduces the force of the old locality test.\(^8\) A narrow reading of *Executive Jet*, limiting its holding as much as possible to the factual situation there involved, indicates that locality is still the primary determinant of admiralty jurisdiction outside the overland aviation tort context, especially where waterborne vessels are involved.\(^9\) This

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35. See note 9 supra.
36. 409 U.S. at 255.
37. See id. at 255–56 n.5 where the Court in dictum voiced apparent disapproval of admiralty jurisdiction for injuries to water skiers, swimmers, and surfers. Apparently the Court was merely expressing discomfort with lower court cases which had extended admiralty jurisdiction to situations "where the invocation of admiralty jurisdiction seem[ed] almost absurd," even though maritime locality was present. Id. at 255. The Court made no attempt to reveal the precise factual basis for its conclusion that a water skier's activity bears no connection to the traditional forms of maritime commerce and navigation, so that it is unclear what particular aspects of that activity the Court found deprived such a claim of any "maritime nexus." In *Crosson v. Vance*, 484 F.2d 840 (4th Cir. 1973), the Fourth Circuit relied on the Supreme Court's remarks, however, seeing in them an "explicit direction" to exclude such claims from admiralty jurisdiction. 484 F.2d at 842.
38. The Court's particular concern was with the fortuity of the crash site determining the dividing line between state and federal jurisdiction. See 409 U.S. at 266.
39. Id. at 259–61.
40. Id. at 261.
41. See Bridwell & Whitten, *Admiralty Jurisdiction: The Outlook for Executive Jet*, 1974 DUKE L.J. 757, where the various interpretations are discussed.
interpretation is supported by the Supreme Court's narrowly drawn holding in *Executive Jet* and by the absence of any specific rejection of the locality requirement. A somewhat more expansive reading would render locality a necessary, but not sufficient, condition of admiralty jurisdiction. This interpretation would require not only that the tort occur on navigable waters, but it also would require some "maritime nexus" between the wrong and traditional maritime concerns. This reading is ultimately not very persuasive. If a "maritime nexus" is always to be required before admiralty jurisdiction attaches, it is difficult to perceive how locality can remain a requirement given the Court's recognition in *Executive Jet* that admiralty jurisdiction can be extended inland when the needs of justice so require. Finally, it can be argued that *Executive Jet* discards the locality requirement completely. Since the Court explicitly approved the extension of admiralty tort jurisdiction inland when the claim involved was essentially maritime in nature, locality would seem to have been supplanted by "maritime nexus" as the controlling jurisdictional test. Which of these readings is ultimately adopted will control the extent to which the lower federal courts are free to consider what they perceive to be the important principles and policies relevant to extending or denying admiralty jurisdiction to pleasure craft litigation.

In addition the Court offered little guidance as to the content of "traditional maritime activities," to which, under the test, the parties' activities must relate. It thus becomes apparent that *Executive Jet*, while attempting to reach a greater consistency in the application of maritime law in the lower courts, has actually sown the seeds of confusion in those courts; the opinion allows a lower court to apply maritime law largely on the basis of its own assessment of what constitutes a "traditional maritime activity." Confusing the matter further are three pre-*Executive Jet* decisions in which the Supreme Court exercised jurisdiction over pleasure craft torts arising from flights by land-based aircraft between points within the continental United States. See notes 43, 45, and 46.

43. "For the reasons stated in this opinion we hold that . . . there is no federal admiralty jurisdiction over aviation tort claims arising from flights by land-based aircraft between points within the continental United States." 409 U.S. at 274.
44. See *Onley v. South Carolina Elec. & Gas Co.*, 488 F.2d 758 (4th Cir. 1973).
45. See 409 U.S. at 259-61.
47. While the Court was fairly explicit as to what sorts of aviation activities do not supply a "maritime nexus," it did not purport to say what activities would provide such a nexus, in an aviation context or otherwise. See 409 U.S. at 268; cf. Bridwell & Whitten, supra note 41, at 761-62. The obvious consequence of this nebulous concept is that the lower courts are free to pour meaning into the "maritime nexus" mould based upon their own conception of what constitute "traditional maritime activities." See text accompanying notes 53 infra.
48. See note 47 supra.
without discussion of the jurisdictional issue. As a matter of precedent, therefore, the applicability of federal maritime law to pleasure boat litigation seems established. Reconciling these precedents with the Court’s later-expressed policy of extending admiralty jurisdiction only to appropriately maritime claims, however, has proven a difficult task for the lower courts.

The Lower Court Conflict

No federal court has been more adamant than the Fourth Circuit Court of Appeals in insisting, as a matter of policy, that most tort claims arising out of the operation of pleasure boats should not be allowed within federal admiralty jurisdiction. Although accepting as a matter of Supreme Court precedent that jurisdiction does in fact extend to such tort claims, a pair of remarkable decisions by the Fourth Circuit, Crosson v. Vance\textsuperscript{50} and Richards v. Blake Builders Supply Co.,\textsuperscript{51} are highly critical of this position. The Fourth Circuit’s chief objection to maritime coverage is that pleasure boating is not substantially related to what it sees as the traditional purpose of the admiralty courts, to provide a uniform body of law for the essentially international maritime shipping industry.\textsuperscript{52} In essence, then, the Fourth Circuit has taken the position that the “maritime nexus” requirement of Executive Jet should be read as necessitating a connection between the tortious activity giving rise to the claim and some form of maritime commerce.\textsuperscript{53}

The first opportunity that the Fourth Circuit had to apply Executive Jet in the pleasure craft area was in Crosson v. Vance. There the court denied admiralty jurisdiction to a water-skier who had been injured when the boat that had been pulling him struck a sandbar in the Chesapeake Bay.\textsuperscript{54} In a rather perfunctory opinion, the court found that the exercise of admiralty jurisdiction was inappropriate because there was no “substantial federal interest”\textsuperscript{55} involved in the controversy and little connection with the “traditional concerns of admiralty.”\textsuperscript{56} The court found support for its denial of admiralty jurisdiction on these grounds in what it saw as a dis-

\begin{itemize}
  \item \textsuperscript{50} 484 F.2d 840 (4th Cir. 1973).
  \item \textsuperscript{51} 528 F.2d 745 (4th Cir. 1975).
  \item \textsuperscript{52} 528 F.2d at 747-48.
  \item \textsuperscript{53} Thus, the Fourth Circuit stated that if there be a continuing need for a relatively uniform body of laws for the governance of the commercial shipping industry, there is not such apparent need for the regulation of the operation of private pleasure craft aside from the Rules of the Road, laws and regulations relating to lights and the provision and maintenance of lifesaving and safety equipment and similar matters. The Congress, by statute, and the Coast Guard, by regulation, can provide all of the uniform rules needed for the operation of small pleasure craft, but those can be interpreted and enforced by state courts as well as by federal judges. Id. at 747.
  \item \textsuperscript{54} 484 F.2d 840-41.
  \item \textsuperscript{55} Id. at 841 n.4.
  \item \textsuperscript{56} Id. at 840.
\end{itemize}
approval by the Supreme Court in *Executive Jet* of the exercise of admiralty jurisdiction in this specific sort of situation, i.e., water-skiing.\(^57\)

Given the holding in *Crosson* that a water-skier has no admiralty claim due to the insubstantial connection of his activity with maritime commerce, the Fourth Circuit's opinion in *Richards v. Blake Builders Supply Co.* is surprising. *Richards* involved separate cases that were decided together because the court determined that they presented the same jurisdictional issue. One case arose from injuries received by a pleasure boat passenger due to an allision of the boat in which he was riding against the bank of a navigable river.\(^68\) Blake Builders Supply, the owner of the boat, in reply to the passenger's complaint petitioned to limit its liability pursuant to the Limitation of Shipowner's Liability Act.\(^59\) The Fourth Circuit upheld admiralty jurisdiction.\(^60\) The other case arose from claims for injuries and death resulting from a motor boat explosion occurring on a navigable lake lying between Virginia and North Carolina.\(^61\) Again the Fourth Circuit found admiralty jurisdiction over the negligence, breach of warranty, and strict liability in tort claims pressed by the injured parties against the manufacturer and vendor of the boat.\(^62\)

The consequence of *Richards* and *Crosson* appears to be that, while a water-skier being pulled by a motorboat has no cause of action in admiralty for injuries resulting from the negligent operation of the boat as his activity bears no substantial relationship to the "traditional concerns of admiralty,"\(^63\) a passenger in a pleasure boat, injured by the same sort of negligent operation, will have a claim in admiralty.\(^64\) The explanation for this anomalous result seems to be both in the policy of the Fourth Circuit

\(^{57}\) The Supreme Court had expressed doubt as to the propriety of allowing a water-skier's claim into admiralty, but it did not purport to overturn the case where such a claim had been permitted. Because this doubt was expressed in dicta some question remains. See note 37 supra. The Fourth Circuit's assured tone in *Crosson* is therefore difficult to understand.

\(^{58}\) The accident occurred on an outing in a high-powered motorboat on the Northeast Cape Fear River in North Carolina. Plaintiff sued the owner of the craft for damages on the theory that the craft was negligently operated. 528 F.2d at 746.

\(^{59}\) 46 U.S.C. §§ 181-89 (1970). By this statutory device, a shipowner may limit the amount of his liability for personal injury or property damage caused by negligence in the vessel's operation or by structural or other defects in the ship, to the value of the vessel after the injury-causing event provided he had neither "privity" nor "knowledge" of the injury-causing negligence or defect. See 46 U.S.C. § 183 (1970). See generally GILMORE & BLACK, supra note 2, at §§ 10-1, 10-4, 10-5 — 10-13.

\(^{60}\) 528 F.2d at 749.

\(^{61}\) The explosion occurred on Lake Gaston, an artificial lake on the Roanoke River, which, although it is not the site of extensive maritime commerce, the court found to be navigable.

\(^{62}\) The district court had read *Crosson* as requiring this exclusion of plaintiffs' claims from admiralty jurisdiction. Id. at 746.

\(^{63}\) 484 F.2d at 840-41.

\(^{64}\) This was the precise result in *Richards*. 528 F.2d 478-79.
in restricting admiralty jurisdiction to essentially commercial claims and in the slippery concept of "maritime nexus" introduced by Executive Jet.65

A careful reading of Crosson and Richards indicates that the Fourth Circuit has determined that the "maritime nexus" test should be more restrictive than was mandated by Executive Jet.66 The court indicated its belief that admiralty jurisdiction should only be invoked where the federal interest in a uniform body of law for the international maritime shipping industry clearly outweighs the state interest in providing a local remedy which would take local peculiarities into account.67 Thus, in exercising admiralty jurisdiction over a tort claim arising from an incident on a state's navigable waters, the Fourth Circuit would require a showing of some connection with either commercial maritime commerce or at least with some substantial federal interest which so required uniform treatment as to be an inappropriate subject for state court jurisdiction.68 In Richards the court indicated that, based on its conception of the appropriate "maritime nexus" test, pleasure boat claims occurring within a state's navigable waters would be a more appropriate subject for state, rather than federal, adjudication.69 The court was particularly concerned with the prospect of providing a federal forum for non-diversity tort claims occurring wholly within a state's boundaries. The Fourth Circuit noted that in such cases the state courts were equally capable of handling the claims,70 and that the applicability of state rather than maritime law71 to such claims would allow the

65. See notes 47 & 53 supra.
66. After indicating the effect of Executive Jet on Crosson, the Court in Richards concluded "that admiralty jurisdiction is present, though we think the jurisdiction should be limited to exclude cases such as these." 528 F.2d 746.
67. See 528 F.2d at 747.
68. In applying the maritime nexus test in Crosson, the Fourth Circuit considered only the plaintiff's activity. If the defendant's activity — operation of the ski boat — is considered, then Crosson becomes indistinguishable from Richards and the three pre-Executive Jet Supreme Court pleasure boat cases. No justification for this one-sided analysis is apparent in the Fourth Circuit's opinions. In Executive Jet the Court required "that the wrong bear a significant relationship to traditional maritime activities." 409 U.S. at 268 (emphasis added).
69. See 528 F.2d at 747-48. See also note 53 supra, where the court indicated that the principal federal interests in pleasure boating could easily be protected by state courts.
70. See 528 F.2d at 747-48.
71. The court said that the state courts are systems which are as capable of dealing with controversies arising out of a collision of two small motorboats as with controversies arising out of the collision of two automobiles on an interstate highway.
72. Among the advantages to a tort claimant in having his claim decided under the maritime law are that the maritime law does not recognize contributory negligence as an absolute defense, as do many states, see Socony-Vacuum Oil Co. v. Smith, 305 U.S. 424, 431 (1938), and that the higher degree of negligence necessary to trigger the liability of a boat owner to his passenger under state guest statutes is not required in admiralty as such statutes would be inapplicable. See St. Hilaire Moye v. Henderson, 496 F.2d 973, 979-81 (8th Cir. 1974).
state court to adjudicate the claims in a manner sensitive to local state interests to which a federal court applying federal law might well be indifferent. In addition the court expressed doubt that liability theories deriving from state legislation and common law could be enforced in an admiralty action. The court also registered a fear that applying admiralty law to allow a pleasure craft owner to limit his liability to the value of the craft after an injury-causing event would result in severe injustice to an injured party.

It must be noted that the court’s policy formulation in Richards would not involve an absolute bar to all claims arising from pleasure boat operation. In particular, the court recognized that many pleasure craft are operated on the high seas, far outside the territorial waters of any state. For those sorts of cases the court indicated that the policies militating against a finding of admiralty jurisdiction would not apply.

Perhaps what is needed is congressional attention to the matter, for the Congress after hearings, could tailor the jurisdiction to the need, relinquishing to the states and to their judicial systems those controversies better handled there while retaining for federal admiralty jurisdiction those controversies for which it is better equipped.

It is thus apparent that, under the reasoning of the Fourth Circuit, the availability of federal maritime law would be a matter of locality as well as of “maritime nexus.”

From the policy announced above, it appears that the court in Richards would have denied admiralty jurisdiction in both cases for want of a sufficient “maritime nexus” to override the state interest in applying its own tort law to these claims; however, the court sustained admiralty jurisdiction on the sole ground that a sufficient “maritime nexus” must exist when pleasure craft on navigable waters are a direct cause of a tort claim because the Supreme Court had so held, without discussion of the jurisdictional point, in the three pre-Executive Jet cases.

Given this difference in underlying policy between Executive Jet and Richards, the Crosson anomaly is not hard to understand. The court in Crosson sought to eliminate as many of the “perverse and casuistic border-

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73. 528 F.2d 747.
74. 528 F.2d at 748.
75. Id. at 748. For discussion of the limitation of a shipowner’s liability, see note 59 supra.
76. See 528 F.2d at 748.
77. Id. at 748.
78. This special recognition of locality — distinguishing between navigable waters that are state territorial waters and the high seas — would clearly cause admiralty jurisdiction to depend upon a mere fortuity, contrary to the policy of Executive Jet. See text accompanying note 38 supra. The Fourth Circuit did not discuss or recognize this problem.
79. See note 66 supra.
80. See note 49 and accompanying text supra.
line” cases as possible, and thus found that a water-skier’s activity bore little connection to either maritime commerce or navigation. The court considered that it could safely deny application of maritime law on the basis of an “explicit leave” to do so in Executive Jet; however, the court could find no such “explicit leave” when it came to torts involving the actual operation of pleasure craft as the Supreme Court had actually decided such cases under the maritime law. The cutting edge between Crosson and Richards is thus their different factual relationships to a federal navigational interest allowed for in the broad Executive Jet “maritime nexus” test. Richards involved a “substantial relationship” to such an interest, and thus allowed the invocation of admiralty jurisdiction, while Crosson bore no such relationship. This constitutes a high degree of hair-splitting and the court recognized the conceptual problem it had created. Nevertheless, this muddled state of affairs continues in the Fourth Circuit.

While the Fourth Circuit has come away from the broadly worded “maritime nexus” test of Executive Jet with a restrictive policy and an inconsistent set of cases purporting to apply that test, the Courts of Appeals for the Eighth and Ninth Circuits have adopted a far broader policy considered consistent with both the letter and the spirit of Executive Jet. While the Fourth Circuit was primarily concerned in Richards with excluding from the application of admiralty law essentially local claims more appropriately dealt with by local law so as to preserve federal admiralty law as the uniform body of regulations of a basically international and interstate industry, the Eighth and Ninth Circuits have been more concerned with maintaining a consistency of results where admiralty jurisdiction is present, regardless of the commercial nature of the activities involved.

In St. Hilaire Moye v. Henderson, the Eighth Circuit found that maritime law could justifiably be applied to a claim arising on a navigable

81. See 484 F.2d at 840. In Crosson the court found that water skiing has “little connection with the traditional concerns of admiralty.” The Crosson court indicated that these concerns were limited by Executive Jet to commercial and navigational interests. Id. at 841-42.
82. Id. at 842.
83. Id. at 842-43.
84. The court acknowledged this problem when it said: Conceptually, we have some difficulty distinguishing between the claim by a water skier against the operator of a towing boat and a claim by a passenger against the operator of a motorboat. . . . [I]n the one instance, [the Supreme Court] gave us explicit leave to hold the controversy outside of admiralty jurisdiction while its own decisions seem to call for an exercise of the jurisdiction and an application of general maritime law when the claimants are occupants of the boat. 528 F.2d at 749.
85. Cf. Lane v. United States, 529 F.2d 175 (4th Cir. 1975), decided fifteen days after Richards, the court found that a pleasure craft owner who was towing a skier on state territorial waters had a cause of action in admiralty against the United States for failing to remove or mark a wreck upon which the owner’s boat had been damaged. Id. at 179.
86. 496 F.2d 973 (8th Cir. 1974).
river where the plaintiff was injured when she fell from a negligently operated pleasure craft. In contrast to the Fourth Circuit the court in *St. Hilaire Moye* found that "[t]he use of a waterborne vessel on navigable waters presents a case falling appropriately within the historical scope and design of the law of admiralty." Implicit in this holding is a formulation of policy to the effect that the proper focus of the maritime law is upon waterborne vessels, rather than upon waterborne commerce alone. The justification for this emphasis is found in the federal interest in protecting navigation and commerce on navigable waters. Waterborne vessels, whether commercial or non-commercial, clearly create a potential threat to this interest. The court found that pleasure boats are waterborne "vessels" within the relevant statutory definition, and as such, their operation is a "traditional maritime activity to which the admiralty jurisdiction of the federal courts may extend." Because their activity comes within the sphere of "traditional maritime activity," the court found the *Executive Jet* "maritime nexus" test easily satisfied in the case of pleasure craft operations on navigable water, regardless of the exact nature of the operations.

A similar conclusion was reached by the Ninth Circuit in *Oppen v. Aetna Insurance Co.*, a case where several owners of private pleasure craft sought recovery for loss of the use of their vessels due to the 1969 Santa Barbara oil spill. The court found under maritime law that loss of the use of a private pleasure craft was not a compensable item of damages, while property damage to the vessels would be compensable, and that both

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87. The plaintiff was thrown from the boat when it was shifted into reverse at a high rate of speed. Plaintiff's leg was severely injured by the boat's propeller. Plaintiff sought both compensatory and punitive damages, and she received an award of $84,000 after trial. Defendants appealed the trial court's denial of their motion to dismiss for lack of admiralty jurisdiction and the trial court's refusal to apply the Arkansas guest statute which would require a showing of "wilful and wanton" negligence. *Id.* at 974-75. The court affirmed the trial court's decisions in both instances. *Id.* at 982.
88. *Id.* at 979. See also *Luna v. State of India*, 356 F. Supp. 59 (S.D. Cal. 1973), where defendant's motion to dismiss for lack of admiralty jurisdiction over plaintiff's claim arising from an injury suffered on board a permanently moored sailing vessel was denied on the ground that the alleged tort occurred on board a vessel in navigable waters. The court found a sufficient maritime nexus to invoke application of the substantive maritime law.
89. 496 F.2d at 979.
90. *Id.*
91. Having concluded that admiralty jurisdiction should be broadly defined in reference to "vessels," the court noted that it could not be asserted that "the term 'vessel' in admiralty law is limited to ships or vessels engaged in commerce." *Id.* at 979. The court cited as controlling the definition of "vessel" established by 1 U.S.C. § 3 (1970) : "The word 'vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water."
92. 496 F.2d at 979.
93. *Id.*
94. 485 F.2d 252 (9th Cir. 1973).
95. *Id.* at 257.
96. *Id.* at 260.
sorts of claims were properly cognizable in admiralty. The court stated that

*Executive Jet* does not compel a reversal in the present case. . . . Such claims do bear a significant relationship to traditional maritime activity. It is precisely plaintiffs' alleged rights to engage in "traditional maritime activity" that they are seeking to protect.

Just as in *St. Hilaire Moye*, the court in *Oppen* gave an expansive reading to *Executive Jet*, finding the "maritime nexus" necessary to sustain admiralty jurisdiction and application of maritime law whenever the claim in issue should arise from either the actual or potential use of a waterborne vessel on navigable waters. For these courts, then, the federal interest in maintaining navigability is a sufficient "maritime nexus" to sustain federal subject matter jurisdiction on admiralty grounds, regardless of local law interests or the non-commercial nature of the plaintiff's activity.

**Analysis and Criticism**

In *Richards* the Fourth Circuit first determined that there was no reason to be found in the traditional purposes and functions of a separate body of maritime law for applying that law to pleasure craft cases. Relying primarily upon the historical analysis of one scholar, the court stated that for federal jurisdictional purposes, tort claims arising from pleasure craft cases were not a separate body of maritime law.

100. 496 F.2d at 979; 485 F.2d at 257. Other federal courts have acted recently in this area without considering the special status, if one exists, of pleasure craft. See *Kelley v. Smith*, 485 F.2d 520 (5th Cir. 1973), where the court found a civil action for damages due to the gunshot wounding of a passenger of a small motor boat on the Mississippi River to be within admiralty jurisdiction, even though the rifle fire causing the accident came from shore, on the rationale that the rifle fire endangered navigation. The court saw a substantial federal interest in navigation, but it did not confront the pleasure craft issue directly. Cf. *Powers v. Bethlehem Steel Corp.*, 477 F.2d 643 (1st Cir. 1973), where the court determined that a raft is not a "vessel" unless it is used to encounter the "perils of navigation." Thus, a claim arising from a tort occurring on a raft in navigable waters does not meet the "maritime nexus" requirement of *Executive Jet*. See also *Hammill v. Olympic Airways*, 398 F. Supp. 829 (D.D.C. 1975), where a wrongful death action arising from a flight from the Greek Islands to Athens over international waters was found to lie in admiralty as the plane was performing a function traditionally exercised by seagoing vessels. Although not considering pleasure craft, the court was expansive with respect to the sorts of activities having a maritime nexus.

The Sixth Circuit Court of Appeals purported to reject the locality test even before *Executive Jet* was decided. See *Chapman v. City of Gross Point Farms*, 385 F.2d 962 (6th Cir. 1967). It is not at all clear, however, how that court would treat the pleasure craft controversy.

101. See 528 F.2d at 747-48.

boat operation in state territorial waters should not, in principle, be treated any differently than automobile torts;\textsuperscript{103} even if these tort claims were capable of being brought in federal court on diversity grounds, the state tort law should be applied.\textsuperscript{104} The court reasoned that state courts are clearly competent to hear these tort claims, as they are handled routinely by state courts in the automobile context.\textsuperscript{105} Absent some overriding federal interest in the type of controversy involved, state courts should be allowed to protect local interests by applying state law to the controversy.\textsuperscript{106}

The court in \textit{Richards} saw no overriding federal interest in pleasure boat torts occurring on state waters. Historically the only reason for having a separate admiralty jurisdiction was to provide a uniform body of law for maritime commerce so as to make the important legal affairs of maritime commerce as predictable as possible.\textsuperscript{107} Therefore, the court reasoned, maritime law should not be extended to situations where such a need for uniformity does not exist.\textsuperscript{108} The court argued that a need for uniformity of law does not exist in cases involving only pleasure craft operation in state territorial waters, as these cases are to be viewed as primarily local in character, involving craft which have no more interstate contact than do automobiles.\textsuperscript{109} It was on the basis of this argument that the court announced a policy of limiting admiralty tort jurisdiction to commercial maritime claims.

This argument is unpersuasive for at least two reasons. First, it is difficult to conceive what is added by the presence of commercial interests in a tort claim so as to achieve the result intended by the \textit{Richards} analysis. Second, it is clear that the federal interest in uniformity must be far broader than merely commercial maritime traffic, given the policy adopted by the Supreme Court on the matter of federal interest.\textsuperscript{110}

The \textit{Richards} analysis fails to take into account the fact that commercial tort claims arising on state waters may be every bit as local as pleasure craft tort claims, and may therefore involve just as many local interests, without any greater need for uniformity on a national level. It is hard to believe that a commercial fishing vessel which never leaves a state's territorial waters is in any different position than is a pleasure craft as

\begin{itemize}
\item \textsuperscript{103} \textit{See} passage cited at note 71 \textit{supra}.
\item \textsuperscript{104} Professor Stolz's position, as summarized with approval by the court, is that state legislatures and courts are better suited to protect local maritime interests than is Congress or the federal court system. In addition, Professor Stolz has argued that the best reason for the separate admiralty jurisdiction is the need for a special court for the governance of the maritime industry, rather than as a means of deciding non-commercial maritime claims. 528 F.2d at 747.
\item \textsuperscript{105} \textit{See} 528 F.2d at 747.
\item \textsuperscript{106} \textit{Id}.
\item \textsuperscript{107} \textit{Id.} at 747-48.
\item \textsuperscript{108} \textit{Id}.
\item \textsuperscript{109} \textit{Id.} at 747.
\item \textsuperscript{110} The Supreme Court saw a federal interest with respect to maritime navigation as well as maritime commerce. \textit{See} 409 U.S. at 269-70.
\end{itemize}
Maryland Law Review regards the need for uniform national treatment by the federal courts. Conversely many large pleasure craft sail internationally as well as interstate, so that it would seem that uniform treatment would be appropriate for such craft for tort claims arising from their temporary operation in state territorial waters. It would be highly inconsistent to have created a separate body of law for maritime commerce in order to provide uniformity and predictability for its legal affairs because those affairs are primarily interstate and international, and at the same time exclude vessels having the same extent of operations simply because those operations are not for profit. If predictability is the hallmark of the proper exercise of admiralty jurisdiction, as the court in Richards seemed to believe, the need for predictability is not necessarily coterminous with the presence of commercial maritime interests; the proper exercise of admiralty jurisdiction cannot begin and end with the presence of commerce. The policy argument in Richards fails to recognize this, and in so doing would include in admiralty many commercial claims which are primarily local, while excluding from admiralty many non-commercial claims arising from essentially interstate or international vessel operation.

In addition the federal versus local interest approach of Richards appears to be framed in an unjustifiably narrow way in light of recent Supreme Court policy pronouncements on the subject. Moragne v. States Marine Lines, Inc. indicates that the federal interest in uniformity is much broader than that outlined in Richards. The Moragne Court sought to effectuate a federally created maritime duty — the warranty of seaworthiness — by recognizing a wrongful death action under the general maritime law, even though some commentators had seen no substantial federal interest in providing such a remedy under maritime law but a weighty state interest in providing such a remedy under state law alone. The opinion can be read for the broad proposition that whenever there appears a need for uniform enforcement of a federally created maritime duty, the maritime law may be used to bring about such a result regardless of the presence of local interests. The most obvious case for such a broad

111. See 528 F.2d at 747-48.
113. Prior to Moragne, the rule had been that there was no provision under the general maritime law for wrongful death actions, so that federal admiralty courts would decide such claims under the applicable state law. See The Harrisburg, 119 U.S. 199 (1886). See generally Comment, Admiralty Jurisdiction: Airplanes and Wrongful Death in Territorial Waters, 64 Colum. L. Rev. 1084 (1964); 49 Texas L. Rev. 128 (1970); 45 Tul. L. Rev. 151 (1970).
114. See, e.g., Stolz, supra note 102, at 100-02.
115. Prior to 1961 the force of this principle favoring uniformity where substantive maritime duties (and the rights arising therefrom) were involved was not clear. The Supreme Court had held that state law could not be used to supplement maritime rights where it would work "material prejudice to the characteristic features of the general maritime law," as such an interference would tend to destroy the uniformity in maritime affairs which had been contemplated by the constitutional grant of admiralty power to the federal courts. Southern Pac. Co. v. Jensen, 244 U.S. 205,
view of the need for uniformity involves those tort claims where the only basis for a pleasure craft's liability is a statutory violation. Under federal statutes, pleasure craft are subject to federal statutory navigational and safety rules. Under the rule of The Pennsylvania a violator of a statutory rule who is involved in a mishap resulting in personal injury or property damage is presumed liable. He can exonerate himself only by demonstrating beyond a reasonable doubt that he was not at fault. This admiralty doctrine puts a statutory violator in far greater jeopardy of being found liable than does the analogous rule of negligence per se under ordinary tort law. The basic rationale for imposing such a danger of liability on a violator of the navigational rules is that the possibility of this danger tends to encourage strict compliance with those rules. Excluding pleasure craft from admiralty tort jurisdiction while keeping them subject to those navigational rules would result in the anomaly of depriving the rules which the Supreme Court felt should be most strictly complied with of much of their compelling force. This would result in a partial frustration of federal policy in an area where federal interest is most substantial, that being the protection of navigation on navigable waters.

The court in Richards had other arguments for denying the extension of admiralty jurisdiction to pleasure craft tort claims within state waters. The court felt that substantial injustice would occur if pleasure boat owners were included in the protection provided by the limitation of liability act thus limiting their liability to the value of the craft after an accident. Due to the potentially small value of a wrecked or sunken pleasure boat in relation to a serious tort claim, the court felt that extending admiralty juris-

216 (1917). This principle applied regardless of the state or federal forum in which the cause was brought. Chelentis v. Luckenbach S.S. Co., 247 U.S. 372 (1918). In Kossick v. United Fruit Co., 365 U.S. 731 (1961), however, it became clear that the Supreme Court had adopted an approach which attempted to balance the federal interest in uniform enforcement of maritime rights and duties against the state interest in regulating local affairs. It should be noted that in striking this balance the Court saw "some presumption in favor of applying that [maritime] law toward the validation" of the maritime right sued upon (which in Kossick was the seaman's traditional right to maintenance and cure). Id. at 741. The extension of this principle to provide uniform application of a federal maritime remedy in an area of law — wrongful death — which had originated in state statutes indicates that the Court in Moragne has given the uniformity interest even more weight than did the Court in Kossick. See generally D. Robertson, Admiralty and Federalism 194–99 (1970).


119. Under the general tort doctrine of negligence per se, it is up to the party seeking to impose liability on the statutory violator to prove that the violation caused the injury. See W. Prosser, Handbook of the Law of Torts § 36 (4th ed. 1971).

120. 86 U.S. (19 Wall.) at 136.

121. See note 59 supra.
dictionary to pleasure boats would deprive some injured parties of most of their recovery.\textsuperscript{122} This is a valid criticism of the limitation statute, but it is not a compelling reason for excluding pleasure craft from admiralty jurisdiction, as the unjust results feared by the courts are by no means confined to pleasure craft. The real problem is the statute itself, which is a relic from the nineteenth century and the heyday of invested capital, and which no longer serves any useful purpose.\textsuperscript{123} The remedy for this problem is not to exclude pleasure craft from admiralty jurisdiction, but rather for Congress to repeal the statute altogether.\textsuperscript{124}

The final reason which the \textit{Richards} court expressed for confining pleasure craft tort claims to state law when they occur in state waters, is that it saw some doubt as to whether federal courts operating under the general maritime law could enforce state law causes of action arising under a state's commercial code, such as breach of warranty, or under state common law, such as strict liability in tort.\textsuperscript{125} It is difficult to determine the basis of the court's doubt on this matter, for it seems quite clear that maritime law can incorporate state law concepts when these doctrines are consistent with the general maritime law, and many courts have found both breach of warranty actions and strict liability in tort actions cognizable in admiralty.\textsuperscript{126}

The arguments on the other side, in \textit{St. Hilaire Moye} and \textit{Oppen}, come down to essentially one position. The relationship to "traditional maritime activity" required by \textit{Executive Jet} is to be defined in terms of vessels plying navigable waters, rather than simply by commercial traffic upon navigable waters. This conclusion is buttressed by what the Eighth and Ninth Circuits saw as a substantial federal interest requiring a broadened view of "traditional maritime activity." The federal government has traditionally been quite concerned with the protection of navigation on navigable waters, so that it has an obvious interest in regulating any activity that poses a potential threat to freedom of navigation. Pleasure craft not only pose such a threat, but as vessels in navigation their owners and operators also have a need for predictability in the rules governing such navigation.\textsuperscript{127} The \textit{Richards} court, while recognizing the need for uni-

\textsuperscript{122} 528 F.2d at 748.
\textsuperscript{123} \textit{See} \textit{Gilmore & Black}, supra note 2, §§ 10-1 — 10-3.
\textsuperscript{124} It has been suggested that the unfairness insofar as limiting the liability of pleasure craft is concerned would be mitigated by limiting the value of a wrecked vessel to a certain minimum sum. \textit{See} \textit{Note}, \textit{Value of a Wrecked Vessel}, 52 \textit{Texas L. Rev.} 114 (1973). While this is at least a rational legislative alternative, there appears no good reason, given the availability of the corporate device to limit a shipowner's liability without the act, why the act should not be eliminated altogether. \textit{See} \textit{Gilmore & Black}, supra note 2, §§ 10-1 to 10-3. \textit{See generally} Harolds, \textit{Limitation of Liability and Its Application to Pleasure Boats}, 37 \textit{Temple L.Q.} 423 (1964).
\textsuperscript{125} \textit{See} 528 F.2d at 748.
\textsuperscript{127} \textit{See} 496 F.2d at 979; 485 F.2d at 257.
formity of navigational rules in the pleasure craft area, contended that uniformity would result by allowing state courts to enforce rules of navigation in conjunction with state tort law. The problem with such a scheme, as previously noted, is that it would reduce the intended deterrent force of the navigational and safety rules by making inapplicable a doctrine designed to encourage strict compliance with those rules, a doctrine only available under the maritime law. Thus far it would appear that the approach to "maritime nexus" indicated by St. Hilaire Moye and Oppen is superior to that of Richards in that it produces more consistent results and has fewer theoretical problems.

The principal objection to the "vessel" approach of the Eighth and Ninth Circuits is that it fails to comport with the historical function of maritime law to provide a uniform body of law for the shipping industry. Historically the maritime law has only been applied to commercial vessels, and therefore there is arguably no good reason for believing that the legislative or judicial intention was in favor of its application to all types of waterborne craft. While this objection may be historically accurate, it overlooks two very important considerations. First, mass production technology has only recently provided pleasure craft in sufficient numbers to generate any significant amount of litigation involving their use in state territorial waters. It is thus hardly surprising when one discovers a dearth of judicial opinion on this subject until only recently. The lack of authority on this issue does not compel the conclusion that Congress or the courts intended one outcome rather than another. Second, there are very good reasons for including "vessels" within the historical purposes of the maritime law as pointed out by the court in St. Hilaire Moye.

All vessels plying navigable waters, regardless of size or their commercial status, face unique hazards on those waters, hazards often resulting in tort claims with which the maritime law, due to centuries of experience, is peculiarly suited to deal. Pleasure craft are no less subject to these hazards than are commercial vessels, so it would seem that the historical

128. See 528 F.2d at 747-48. The probability that the Richards formula would result in an absence of uniform regulation of maritime navigation is high. The result under Richards would essentially be that two different types of craft would operate upon the same waters under separate duties and responsibilities imposed by different sovereigns. Due to the Supreme Court's obvious intention to retain federal hegemony over the application of federal maritime law to substantial maritime rights and duties, see note 115 supra, the Richards result seems both illogical and contrary to stated Supreme Court policy.

129. See text accompanying note 120 supra.

130. For an exposition of this "historical function" argument in the pleasure boat context, see Stolz, supra note 102, at 665-99. See also Note, Hops, Skips and Jumps into Admiralty Revisited, 39 J. AIR L. & COMM. 625, 636-38 (1973).

131. See authorities cited in note 130 supra.

132. See note 1 supra.

133. See 396 F.2d at 979.

134. Lane v. United States, 529 F.2d 175 (4th Cir. 1975) discussed in note 85 supra, is indicative of one of the unique hazards of waterborne travel around which special duties have evolved resulting in tort liability. In that case the plaintiff's pleasure
function of maritime law in dealing with these unique situations is no less appropriate in the pleasure boat context than it is in the context of commercial vessels. It is for these reasons that the historical objection to the "vessel" approach toward "maritime nexus" is less than convincing.

CONCLUSION

Tort claims arising out of pleasure craft operation on state territorial waters have presented the federal courts with new admiralty jurisdictional issues. Lack of clear guidance by the Supreme Court, especially in the ambiguous opinion in *Executive Jet*, has driven the lower courts to analyze the basic purposes in having a separate body of admiralty law in order to resolve these issues. Lower court analysis has not been uniform. Thus, in *Richards*, the Fourth Circuit focused on the commercial needs of the shipping industry as the essential justification for admiralty law, putting itself in a position where it is forced to make absurd distinctions between injured passengers and injured non-passengers in order to effectuate its policy without abrogating precedent. It was this very sort of fortuity, however, that the Supreme Court was seeking to eliminate when it introduced the "maritime nexus" requirement. The policy analysis adopted in *St. Hilaire Moye* and *Oppen*, on the other hand, seems clearly more desirable in that it excludes fortuitous, non-maritime tort claims from admiralty jurisdiction while at the same time avoiding the strained reasoning and inconsistency of result found in *Crosson* and *Richards*. Thus interpreting "maritime nexus" as requiring a connection only with a waterborne vessel or some function normally carried on by such a vessel would eliminate from admiralty jurisdiction such troublesome claims as surfboard accidents,\(^1\) swimmers colliding with the submerged section of land-based structures,\(^2\) and automobile mishaps on ferry-boat ramps.\(^3\) This approach has the virtue of simplicity of application possessed by the locality test without sharing the vice of an over-inclusiveness resulting in fortuitous claims being heard in admiralty. It would keep pleasure craft tort claims under maritime law, which is appropriate given the federal interests involved in adjudicating such claims under that law, without opening too widely the door to the federal court house. The ultimate resolution of this policy conflict rests with the Supreme Court or Congress, but meanwhile it appears that the "vessel" approach taken by *St. Hilaire Moye* and *Oppen* is superior to that taken by *Richards* in determining admiralty jurisdiction over pleasure craft tort claims.

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\(^1\) See 409 U.S. at 265 n.5.
\(^2\) Id.