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A Sea of Confusion: The Shipowner's Limitation of Liability Act as an Independent Basis for Admiralty Jurisdiction

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NOTE

A SEA OF CONFUSION: THE SHIPOWNER'S LIMITATION OF LIABILITY ACT AS AN INDEPENDENT BASIS FOR ADMIRALTY JURISDICTION

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The Shipowner's Limitation of Liability Act of 1851 allowed the owner of a vessel to limit his liability in the case of an accident to the value of the vessel and its cargo if he could show he had no knowledge of or participation in the negligent act that resulted in the loss. In 1911, the Supreme Court decided Richardson v. Harmon, *a case which was interpreted for several decades to hold that the Limitation Act formed an independent basis for admiralty jurisdiction. In a 1990 case, the Supreme Court stated in a footnote that it would not reach the question of whether the Limitation Act was an independent basis for admiralty jurisdiction—which several Courts of Appeal took to mean that the Act's continued vitality as a jurisdictional basis was an open question. Since that time, many Courts of Appeal have held that the Limitation Act is not, for a variety of reasons, an independent basis for admiralty jurisdiction.*

This Note argues that the Limitation Act continues to form an independent basis for admiralty jurisdiction. It examines the history of admiralty jurisdiction and the Limitation Act and explains why the Limitation Act should form an independent basis for admiralty jurisdiction even for cases in which the facts of the underlying tort claim might not otherwise come within the boundaries of admiralty.

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INTRODUCTION

The Shipowner's Limitation of Liability Act,[1] a peculiar and often-criticized creature of admiralty law, allows the owner of a vessel to limit his liability to the value of the vessel following an accident, provided he had no knowledge of the negligence that caused the accident.[2] For example, a common scenario when the Limitation Act was passed involved vessel owners who bought a ship and entrusted it to a captain and crew who were solely responsible for its maintenance and operation. If some event such as a fire or collision took place, the owner could demonstrate a lack of "privity or knowledge" and limit his liability. When the Act was passed in 1851, the goal was to ensure that businessmen would not be deterred from investing in shipping and shipbuilding because of the risk of facing enormous liability due to the actions of a crew.[3] Over time, the Act has been amended and interpreted to apply to all sorts of vessels, ranging from ocean liners to small pleasure boats. It has also become commonplace to argue that the Limitation Act should be abolished: critics have, for example, focused on such issues as the Act's ability to unfairly limit damages in certain cases and the potential for defense attorneys to employ the Act as a strategic weapon.[4]

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1. 46 U.S.C.S. § 30505 (LexisNexis 2007).

2. In order to invoke the Limitation Act, a vessel owner must prove the loss occurred "without [his] privity or knowledge"—that he did not participate in or have any knowledge of the negligence leading to the accident. 3 BENEDICT ON ADMIRALTY, LIMITATION OF LIABILITY § 41 (7th ed., rev. 2008).

3. *E.g.*, Norwich Co. v. Wright, 80 U.S. (13 Wall.) 104, 116 (1872) (discussing ancient limitation laws and noting Grotius' statement that "men would be deterred from investing in ships if they thereby incurred the apprehension of being rendered liable to an indefinite amount by the acts of the master . . . .").

4. *E.g.*, GRANT GILMORE & CHARLES L. BLACK, JR., THE LAW OF ADMIRALTY 846 (2d ed. 1975) ("The only safe thing to do with such a statute is to repeal it . . . ."); Mark A. White, Comment, *The 1851 Shipowners' Limitation of Liability Act: Should the Courts Deliver the Final Blow?*, 24 N. ILL. U. L. REV. 821 (2004). While certain policy considerations counsel against an expansive reading of the Limitation Act, chipping away at it piece by piece is an ineffective approach. Eliminating the Act's power to support admiralty jurisdiction would trade one set of problems for another. *See infra* Section II.B.

Based on the natures or localities of underlying claims, many cases in which a vessel owner may wish to invoke the Limitation Act are already obviously within the admiralty jurisdiction of the federal courts. For example, tort claims are swept into admiralty jurisdiction if the event or events giving rise to the claims (1) occurred on navigable waters and (2) had some connection or nexus with traditional maritime activity.[5] In some cases, however, a defendant vessel owner wishes to use the Limitation Act to limit his liability, even though the statute itself (rather than locality or nature) is the *only* basis for admiralty jurisdiction.[6] In such cases, courts must determine whether the Limitation of Liability Act creates an *independent* basis for admiralty jurisdiction. Although the practice of seven decades was to answer this question in the affirmative, in recent years several circuit courts have sought to change this long-standing rule.[7]

This Note argues that the Limitation of Liability Act continues to provide an independent basis for admiralty jurisdiction. Part I of this Note discusses the difficulty of identifying the bounds of admiralty jurisdiction or the scope of the Limitation Act. It then analyzes *Richardson v. Harmon*,[8] the case in which the Supreme Court in 1911 extended admiralty jurisdiction based on the Limitation Act even though the underlying claim could not otherwise have been brought in admiralty. Finally, Part I introduces the controversy, rekindled by a Supreme Court footnote in 1990, over whether the Limitation Act serves (or should continue to serve) as an independent basis for jurisdiction. Part II first examines the reasoning of several Courts of Appeal that have held the Limitation Act not to be an independent ground for admiralty jurisdiction, and argues that these courts have erred in departing from the rule in *Richardson*. It then explains why the Limitation Act should continue to be read consistently with *Richardson* as an independent basis for admiralty jurisdiction.

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5. *See* Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249 (1972). For purposes of admiralty jurisdiction, a navigable waterway is a "stream or body of water, susceptible of being made, in its natural condition, a highway for commerce, even though that trade be nothing more than the floating of lumber in rafts or logs." The Daniel Ball, 77 U.S. (10 Wall.) 557, 560 (1871). The "natural condition" of a water body does not refer to whether the water would be navigable in its original, natural state; rather, it means that a waterway is not to be considered navigable if flooding occasionally causes it to support a vessel of some kind. United States v. Appalachian Elec. Power Co., 311 U.S. 377, 407 (1940).

6. For example, if two boats collide on a lake considered nonnavigable for purposes of admiralty jurisdiction over torts, an owner may still wish to invoke the Limitation Act. *E.g.*, Three Buoys Houseboat Vacations U.S.A. Ltd. v. Morts, 921 F.2d 775 (8th Cir. 1990).

7. *E.g.*, Seven Resorts, Inc. v. Cantlen, 57 F.3d 771 (9th Cir. 1995); *Three Buoys*, 921 F.2d 775; Lewis Charters v. Huckins Yacht Corp., 871 F.2d 1046 (11th Cir. 1989); *In re* Sisson, 867 F.2d 341 (7th Cir. 1989).

8. 222 U.S. 96 (1911).

I. THE SCOPE OF ADMIRALTY JURISDICTION AND THE LIMITATION ACT AS AN INDEPENDENT BASIS FOR ADMIRALTY JURISDICTION

For several decades, it seemed there was little doubt that the Limitation Act constituted an independent basis for admiralty jurisdiction. Scholars stated this rule in treatises,[9] Supreme Court cases cited it,[10] and the Second Circuit in particular applied it in cases that would not have traditionally been classified as maritime claims on the basis of the case facts.[11] It was not until the early 1990s that several Federal Courts of Appeal, including the Seventh, Eighth, Ninth, and Eleventh Circuits, began to hold otherwise, finding instead that in the absence of facts giving rise to maritime jurisdiction vessel owners simply could not get their cases into federal court through admiralty jurisdiction.[12] Section I.A begins with the Constitution's grant of admiralty and maritime jurisdiction, and discusses the history and the current state of that jurisdiction. Section I.B examines the text of the Limitation of Liability Act of 1851, the statute that Congress used to expand admiralty jurisdiction significantly. Section I.C introduces *Richardson v. Harmon*, the case in which the Supreme Court first extended admiralty jurisdiction based solely on a petition to limit liability, and explains how *Richardson* set the stage for the circuit split today. Section I.D describes the recent controversy, sparked by a footnote in a Supreme Court opinion, over the Act's status as a jurisdictional basis.

A. *The Puzzle of Defining Admiralty Jurisdiction*

The contours of admiralty jurisdiction have been puzzling and imprecise from the time that Article III was written in the late eighteenth century.[13] Article III provides constitutional authorization for Congress to grant the federal courts jurisdiction over "all cases of admiralty and maritime Jurisdiction."[14] Unfortunately, this language offers little or no hint as to what sort of matters actually *constitute* "admiralty and maritime jurisdiction." The inclusion of the word "maritime" was perhaps meant to imply that the boundaries of "admiralty and maritime" jurisdiction in the United States

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9. E.g., 1 BENEDICT ON ADMIRALTY, JURISDICTION AND PRINCIPLES § 225 (7th ed., rev. 2008) ("Proceedings by vessel owners to limit their liability as permitted by the Acts of Congress are within the admiralty jurisdiction even if the claims limited against might not be sued upon in admiralty."); GILMORE & BLACK, *supra* note 4, at 846.

10. *E.g.*, Just v. Chambers, 312 U.S. 383, 386 (1941) ("When the jurisdiction of the court in admiralty has attached through a petition for limitation, the jurisdiction to determine claims is not lost merely because the shipowner fails to establish his right to limitation.").

11. *See, e.g.*, The No. 6, 241 F. 69, 71 (2d Cir. 1917) (noting that the damage to a gas line buried under the Harlem River was "not wrought on or in the water" and as such was a nonmaritime tort).

12. *See Seven Resorts*, 57 F.3d 771; *Three Buoys*, 921 F.2d 775; *Lewis Charters*, 871 F.2d 1046; *In re* Sisson, 867 F.2d 341.

13. The Blackheath, 195 U.S. 361, 365 (1904) ("The precise scope of admiralty jurisdiction is not a matter of obvious principle or of very accurate history.").

14. U.S. CONST. art. III, § 2.

would be more expansive than was the somewhat limited jurisdiction of English admiralty courts.[15] Admiralty jurisdiction in the United States, for example, would cover "all maritime contracts, torts, and injuries,"[16] while in England, many such cases were decided by the common law courts instead of the admiralty courts.[17] The United States has never had admiralty courts separate from other federal courts; instead, the District Courts have the power to hear cases based on admiralty jurisdiction. Until 1966, the District Courts maintained separate dockets for admiralty cases, but they currently appear on the same docket. Even so, some mechanisms specific to admiralty jurisdiction still exist—the general maritime law can be applied where appropriate, and the procedures found in the Supplemental Maritime Rules apply. For example, there is no right to jury trial in admiralty cases.

Shortly after ratification of the Constitution, Congress acted upon its Article III power and in the First Judiciary Act of 1789 granted the District Courts "exclusive original cognizance of all civil cases of admiralty and maritime jurisdiction."[18] The language of the Act resembled that of Article III, but further detailed the jurisdictional grant, seeking to clarify confusion resulting from Article III's general nature. A major priority for Congress in enacting the First Judiciary Act, for example, was to ensure that prize cases involving seizures made at sea or in waters navigable from the sea would be adjudicated in federal courts instead of state courts, which had heard such cases following the Revolutionary War.[19] Two important provisions that initially appeared in the First Judiciary Act and now appear in § 1333 granted federal courts jurisdiction over "[a]ny civil case of admiralty or maritime jurisdiction" and over "[a]ny prize brought into the United States and all proceedings for the condemnation of property taken as

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15. Historically, the English admiralty courts had broad jurisdictional powers, but in the 1700s, those powers were narrowed to a handful of categories involving vessels, mariners' wages, and injuries on the high seas, etc. In 1840, the English Admiralty Courts experienced something of a revival, but were still severely limited at the time Article III was written. *See* 1 BENEDICT, *supra* note 9, §§ 51–52.

16. De Lovio v. Boit, 7 F. Cas. 418, 444 (C.C.D. Mass. 1815) (No. 3776); 1 BENEDICT, *supra* note 9, § 104, at 7-7 ("[T]he admiralty and maritime jurisdiction of the United States is not limited either by the restraining statutes or the judicial prohibitions of England . . . but is to be interpreted by an original view of its essential nature and objects . . . .").

17. 1 BENEDICT, *supra* note 9, §§ 51–52.

18. Judiciary Act of 1789, ch. 20, 1 Stat. 73, 77 (codified as amended at 28 U.S.C. § 1333 (2006)).

19. *Id.* ("[The district courts] shall also have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation or trade of the United States, where the seizures are made, on waters which are navigable from the sea by vessels of ten or more tons burthen, within their respective districts as well as upon the high seas; (a) saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it; and shall also have exclusive original cognizance of all seizures on land, or other waters than as aforesaid, made, and of all suits for penalties and forfeitures incurred, under the laws of tile United States."); STEVEN L. SNELL, COURTS OF ADMIRALTY AND THE COMMON LAW: ORIGINS OF THE AMERICAN EXPERIMENT IN CONCURRENT JURISDICTION 318 (2007).

prize."[20] Within the broad outline of Article III, the Supreme Court has had wide latitude to shape the boundaries of admiralty jurisdiction.[21]

In the more than two centuries since the passage of the Judiciary Act of 1789, the reaches of admiralty jurisdiction have expanded considerably, both through statutes and judicial interpretation of those statutes.[22] In the early days of admiralty jurisdiction in the United States, the jurisdiction was not understood to extend to navigable rivers or lakes, but to include only the seas and so far inland as the tides could reach. In 1845 Congress enacted the Great Lakes Act, a statute that extended admiralty and maritime jurisdiction to the Great Lakes and the navigable waters that connected them.[23] In 1851, in *The Propeller Genesee Chief v. Fitzhugh*, the Supreme Court upheld the Great Lakes Act against a constitutional challenge, thus confirming that admiralty jurisdiction was not limited, with regard to locality, to those waters within the reach of the tides.[24] In 1868, the Court went further, stating that the 1789 Judiciary Act had *never* meant that admiralty jurisdiction only extended to tidewaters; this statement in effect rendered the 1845 Great Lakes Act superfluous, as the Court was now suggesting that federal courts had *always* had jurisdiction over the Great Lakes and navigable waters in the United States.[25]

B. *The History and Procedure of the Limitation Act*

The Limitation Act permits the owner of a vessel to limit his liability resulting from an accident to the value of the vessel, so long as he demonstrates his lack of knowledge or participation in the event giving rise to the claims.[26] The Act passed on the last day of the 1851 legislative session, with no debate in the House and very little debate in the Senate.[27]

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20. 28 U.S.C. § 1333.

21. *See* GILMORE & BLACK, *supra* note 4, at 20–21.

22. *See infra* Section II.B. The major changes in admiralty jurisdiction discussed here illustrate this trend; their relationship to the Limitation Act is discussed in Section II.B.

23. Great Lakes Act, ch. 20, 5 Stat. 726 (1845) (codified as amended at 28 U.S.C. § 1873 (2006)); The Propeller Genesee Chief v. Fitzhugh, 53 U.S. (12 How.) 443 (1852).

24. *Propeller Genesee Chief*, 53 U.S. 443.

25. The Eagle, 75 U.S. (8 Wall.) 15 (1869).

26. 46 U.S.C.S. § 30505 (LexisNexis 2007) ("[T]he liability of the owner of a vessel for any claim, debt, or liability described in subsection (b) shall not exceed the value of the vessel and pending freight. If the vessel has more than one owner, the proportionate share of the liability of any one owner shall not exceed that owner's proportionate interest in the vessel and pending freight. (b) Claims subject to limitation. Unless otherwise excluded by law, claims, debts, and liabilities subject to limitation under subsection (a) are those arising from any embezzlement, loss, or destruction of any property, goods, or merchandise shipped or put on board the vessel, any loss, damage, or injury by collision, or any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of the owner.").

27. CONG. GLOBE, 31st Cong., 2d Sess. 331–32 (1851); *see* Limitation Act, ch. 43, 9 Stat. 635 (1851) (codified as amended at 46 U.S.C. app. §§ 181–188 (2006)). For a discussion of the Senate debate, see James J. Donovan, *The Origins and Development of Limitation of Shipowners' Liability*, 53 TUL. L. REV. 999 (1979).

While this dearth of debate means that it is not clear exactly why legislators favored the act, judges and scholars have generally accepted that Congress's purpose in passing the Limitation Act was to encourage shipping.[28] To this end, the Act protected the investment of a vessel owner by limiting his liability to the value of the vessel, thus shielding him from large damage awards for cargo lost at sea or for injuries suffered in accidents.[29] Because the amount of liability an owner could face was limited to his investment in the vessel, he would presumably not be deterred from future investments in maritime shipping. Similarly, given the limitations on liability, other potential investors would presumably not fear placing their money in what would otherwise be such a risky industry.[30] As drafted, the Limitation Act made no mention of any jurisdictional requirements (such as navigability) and offered no guidance to courts as to how to proceed with protecting the investments of vessel owners.[31]

The Act was amended in 1884, as part of a larger bill concerning the shipbuilding industry in the United States.[32] The amendment clarified that if a vessel belonged to several owners, each owner's liability would be limited to his share in the vessel—the aggregate recovery against all of the owners could equal no more than the vessel's value.[33] While the original measures had been intended to bolster the United States' merchant marine, it became clear in the interim that without a strong shipbuilding industry, U.S. shipping could not match England's.[34] While the changes to the Limitation Act itself were minimal, its inclusion in the bill demonstrates that the purpose of shipbuilding was layered on top of the original intent to encourage shipping.[35]

Despite the fact that Congress had cared enough about limiting vessel-owner liability to pass the Limitation Act in 1851, no one invoked the Act (and no court had an opportunity to apply it) until 1871, twenty years after

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28. *See, e.g.*, Norwich Co. v. Wright, 80 U.S. (13 Wall.) 104, 116 (1872) (stating that the history of shipowner's limitation of liability is common knowledge and explaining the circumstances of its creation); 1 BENEDICT, *supra* note 9, § 109, at 7-22 ("[T]he Limitation of Liability Act . . . [was] enacted for the purpose of encouraging investment in shipbuilding, by limiting the venture of shipowners to the loss of the ship itself, or her freight then pending . . . .").

29. *Norwich*, 80 U.S. at 119; CONG. GLOBE, 31st Cong., 2d Sess. 331–32 (1851).

30. *Norwich*, 80 U.S. at 116; CONG. GLOBE, 31st Cong., 2d Sess. 331–32 (1851). Some courts and scholars have determined that the purpose of encouraging investment and shipping is no longer a primary goal in a world with marine insurance and a proliferation of recreational vessels—or is certainly far less important than it was in a world in which all international travel was dependent upon oceangoing vessels. While the original purpose of the Act is certainly less pressing, the Limitation Act has been amended several times—although not since 1936—and not only remains intact, but applies to more types of vessels and claims than it initially did. This suggests that in fact, at least through 1936, Congress believed that the Act's purpose *was* valid.

31. 9 Stat. at 635–36.

32. Act of June 26, 1884, ch. 121, § 18, 23 Stat. 53, 57–58 (codified as amended at 46 U.S.C. app. § 189 (2006)).

33. *Id.*

34. *See* 15 CONG. REC. 3427–31 (1884).

35. *See id.*

its passage. In that year, the Supreme Court first encountered the Limitation Act in *Norwich Co. v. Wright*, and observed that "[t]he circumstances which led to the passage of the act were notorious."[36] In his opinion, Justice Joseph P. Bradley briefly described the two steamship fires that had resulted in lost lives and cargo and had ultimately led to the Act's passage.[37] The earlier of the two incidents was the burning of the steamship *Lexington* on January 13, 1840.[38] While traveling from New York to Boston, the *Lexington* caught fire and sank in the Long Island Sound. Out of the 143 passengers, only four survived.[39] The ship was also carrying valuable cargo,[40] and in 1848, after years of litigation, the shipowners were found liable for the entire value of the cargo even though the fault attributed to them resulted not from the company's own actions, but from the conduct of a separate carrier, with whom they had contracted to operate the ship.[41] The Court found that the shipowners were in business as a common carrier and, as such, were considered insurers of all the goods they undertook to transport, whether or not they contracted with another carrier (and included clauses meant to shift any liability to the other carrier).[42] While a provision in the shipping contract stated that the vessel owner would not be liable for loss due to fire, the Court found that clause unenforceable, the responsibility for insuring the goods being assigned by law to the shipowner, and so found against the vessel owners.[43] The second incident leading to the passage of the Act occurred in 1849, when the steamship *Henry Clay*, which had been loaded with cargo and was still docked in New York, caught fire and burned to the waterline.[44] Those whose cargo was lost sued the shipowners and achieved the same result as in the *Lexington* litigation—liability for the shipowners with no evidence of fault.[45] Apparently deciding that such rulings would prove harmful to the United States' maritime trade, Congress drafted and passed the Limitation Act, with the clear goal of protecting vessel owners who were not at fault for maritime accidents.[46]

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36. Norwich Co. v. Wright, 80 U.S. (13 Wall.) 104, 108–09 (1872).

37. *Id.*

38. *Id.*; Joseph C. Sweeney, *Limitation of Shipowner Liability: Its American Roots and Some Problems Particular to Collision*, 32 J. MAR. L. & COM. 241, 248 (2001).

39. Sweeney, *supra* note 38, at 249. For one of many artistic renderings of the tragedy, see W.K. Hewitt, *Awful Conflagration of the Steam Boat Lexington in Long Island Sound* (Nathaniel Currier lithographer, 1840), *available at* http://hdl.loc.gov/loc.pnp/cph.3g03102.

40. Among the valuable cargo on the ship was a wooden crate—the contents of which had been undeclared—which contained $18,000 worth of commercial paper. Donovan *supra* note 27, at 1011 (providing a detailed discussion of the *Lexington* case).

41. N.J. Steam Navigation Co. v. Merchs.' Bank of Boston, 47 U.S. (6 How.) 344, 381–85 (1848).

42. *Id.* at 381.

43. *Id.* at 382–85.

44. Norwich Co. v. Wright, 80 U.S. (13 Wall.) 104, 109 (1872).

45. *Id.*

46. *Id.*; Sweeney, *supra* note 38, at 252–62.

Since its passage in 1851, the Limitation of Liability Act has been a recognized basis of admiralty jurisdiction, even though its status as such has come into question in recent years.[47] The Limitation Act is not a model of clarity and courts faced with applying the Act when it was first invoked twenty years after its passage were left with the task of figuring out not only which courts should have jurisdiction over limitation proceedings, but also what procedures should be in place for those vessel owners seeking to invoke the Act's protection. The Supreme Court addressed these issues in the 1871 case of *Norwich Co. v. Wright*, setting out specific procedures for limitation actions and deciding that admiralty courts should hear them.[48] That case involved a collision between a schooner, which sank immediately, and a steamboat, which caught fire and then sank.[49] The owners of the schooner sued the owners of the steamboat, who decided to invoke the protection of the Limitation Act.[50] The Supreme Court realized there was no procedure in place for invoking the Act, and that the Act itself made no mention of how vessel owners would be protected.[51] Instead of waiting for the procedures to be filled in through a series of legislative or lower-court decisions, the Supreme Court took the extraordinary step of designing comprehensive rules to dictate how a vessel owner could seek limitation under the Act.[52]

The rules the Supreme Court promulgated provided for a procedure by which vessel owners could petition for limitation of liability in federal district court, no matter where or in what court the initial claims against the shipowners had been brought. The rules enable vessel owners to bring a limitation proceeding in federal court—entirely separate from the underlying claim—instead of merely raising the Limitation Act as a defense. This procedure, designed by the Court in *Norwich*, is now codified in Supplemental Rule F of the Federal Rules of Civil Procedure; the rules for the most part remain unchanged from the rules the Court articulated in *Norwich*.[53] Under the Federal Rules, within six months of receiving written notice of a claim against him, a vessel owner must file a petition for limitation of liability in a District Court.[54] The vessel owner must then deposit a "limitation fund" with the court that is equal to the value of the vessel, or else must provide surety for that amount.[55] The federal district court then halts any and all proceedings in any state or federal court and issues notice that all claims

47. *See infra* Richardson v. Harmon, 222 U.S. 96 (1911); Seven Resorts, Inc. v. Cantlen, 57 F.3d 771, 773 (9th Cir. 1995) ("*Richardson* undeniably holds that the Act is capable of conferring independent jurisdiction beyond admiralty jurisdiction."); Section I.C.

48. *Norwich*, 80 U.S. at 123–25.

49. *Id.* at 106–07.

50. *Id.* at 107–08.

51. *Id.* at 123.

52. *Id.* at 125. The Court outlined the procedures now found in Supplemental Rule F of the Federal Rules of Civil Procedure, FED. R. CIV. P. SUPP. F.

53. FED. R. CIV. P. SUPP. F.

54. *Id.*

55. *Id.*

arising out of the incident must be brought in the court handling the limitation proceeding.[56] Once all claims are brought in the District Court, in a proceeding known as a "concursus," the judge then determines whether the owner is subject to liability for the damages claimed. If so, the judge then considers whether the owner is entitled to limit his liability—a determination that hinges on the owner's privity or knowledge. This procedure is complex and, because it results in all claims being heard by a judge and not a jury, allows for defense attorneys to wield the Limitation Act as a strategic weapon.[57] Defense attorneys might wield the Act with special force in personal injury cases where a sympathetic jury might award a substantial amount of damages to an injured plaintiff, but where a presumably more objective judge will limit liability in conformance with the Act.[58]

In addition to designing the procedures by which vessel owners would bring limitation actions, the *Norwich* court noted that while the Limitation Act "[did] not state what court [should] be resorted to," the appropriate courts to hear limitation actions were the admiralty courts[59]—or the federal district courts sitting in admiralty. In reaching this conclusion, the Court stated that "no court is better adapted than a court of admiralty to administer precisely such relief" and pointed out that admiralty courts are experienced with maritime liens and *in rem* proceedings, which resemble limitation actions in many ways.[60] Additionally, the Court considered that Congress had not specified that limitation petitions should go to the Circuit Courts and noted that the state courts clearly did not have jurisdiction.[61] At the time of the *Norwich* decision, the District Courts' dockets were still filled with ad-

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56. *Id.* at § 3. The goal of the procedures put in place for limitation actions is similar to that of bankruptcy procedures: both involve the distribution of a fund that is inadequate to fulfill all claims equitably among a group of claimants. *See also* Md. Cas. Co. v. Cushing, 347 U.S. 409, 415 (1953) ("The heart of [the Limitation] system is a *concursus* of all claims to ensure the prompt and economical disposition of controversies in which there are often a multitude of claimants.").

57. Langes v. Green, 282 U.S. 531, 543 (1931) ("[I]f there is an ulterior purpose, and petitioner's object in invoking the jurisdiction of this Court is to escape a jury trial and take the case away from the common law jurisdiction, that purpose should receive no countenance here . . . . " (quoting The Lotta, 150 F. 219, 223 (D. S.C. 1907)).

58. *See* Lake Tankers Corp. v. Henn, 354 U.S. 147, 152–53 (1957).

59. Norwich Co. v. Wright, 80 U.S. (13 Wall.) 104, 123 (1872).

60. *Id.* In the world of maritime law, ships have their own legal personality. As such, when a claim involving a vessel arises from either a tort or contract issue, a property interest is created for the claimant against the vessel itself. This fiction is different than simply holding the owner liable for damages. 2 BENEDICT ON ADMIRALTY, CLAIMS AGAINST THE VESSEL § 21, at 2-1 to 2-2 (7th ed., rev. 2008). Courts sitting in admiralty have exclusive jurisdiction over maritime liens, and hear all claims against the vessel in one proceeding, much like the concursus that occurs in a Limitation Action. *Id.* § 22, at 2-12 & n.11. The idea of a maritime lien is that "the vessel itself is liable for torts and contracts, even though its owner may not be." *Id.* § 22, at 2-10. This means that regardless of the owner's liability, the claimant is entitled to recover up to the value of the vessel, just as he is under the Limitation Act.

61. *Norwich*, 80 U.S. at 123.

miralty and maritime cases,[62] so it likely did not seem strange for the Court to bestow the responsibility of hearing limitation actions upon them.[63]

The Court did not address the seemingly more important threshold question of whether the Limitation Act supported admiralty jurisdiction in and of itself until fifteen years later, when the Court decided *Ex parte Phenix Insurance Co.*[64] Forty years after *Phenix*, the Court revisited the issue in *Richardson v. Harmon*, deciding that the Limitation Act worked broadly to grant federal admiralty jurisdiction even in the absence of other bases for such jurisdiction.[65] After *Richardson*, it took almost seventy years before any federal Court of Appeals ventured the suggestion that the Act should *not* provide an independent basis for federal admiralty jurisdiction.

C. *Establishing the Act as an Independent Basis for Jurisdiction: The Meaning of* Richardson v. Harmon

The Supreme Court's 1911 decision in *Richardson v. Harmon* seemed to many courts and observers to establish the Limitation Act as an independent basis for jurisdiction—a rule that held unquestioned sway for nearly seven decades. In announcing the independent-jurisdiction holding of *Richardson*, the Court did a complete about-face from its 1886 decision in *Ex parte Phenix Insurance Co.*[66] In *Phenix*, a steamboat passing near shore threw off sparks that started a fire that consumed several buildings.[67] The steamboat's owner sought to limit his liability against the claims of the owners of the buildings, but the Court held that "where, as here, the tort is not a maritime tort, there can be no jurisdiction in the admiralty to determine the issue of liability or that of limitation of liability."[68] In other words, the Court viewed the damaging of shore-based facilities by a ship as "not a maritime tort." The Court then concluded that the key test was whether the tort in question was a maritime tort—whether the incident occurred on navigable waters and had a nexus to maritime activity—and that the Limitation Act could not be invoked if admiralty jurisdiction were not otherwise established.[69]

The Court in *Richardson v. Harmon* rejected the *Phenix* reasoning and test, and instead held that the Limitation Act applied "whether the liability

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62. *See* Warren J. Marwedel, *Admiralty Jurisdiction and Recreational Craft Personal Injury Issues*, 68 TUL. L. REV. 423, 424 (1993).

63. In the days after the First Judiciary Act, the lower federal courts only heard admiralty cases and diversity cases. Federal question jurisdiction had not yet come into being, and so admiralty cases were a substantial portion of the caseload for district courts. *See* 15 Moore's Federal Practice § 100 App. 01 (3d ed. 2009).

64. 118 U.S. 610 (1886); *see infra* Section I.C.

65. *See infra* Section I.C.

66. 118 U.S. 610 (1886).

67. *Id.* at 611.

68. *Id.* at 625.

69. *Id.*

be strictly maritime or from a tort non-maritime."[70] *Richardson* was similar to *Phenix* in that it concerned a vessel on water causing damage to a structure on land.[71] In *Richardson*, a steam barge left Lake Erie and, while traveling up the Maumee River, collided with the abutment of a bridge.[72] The bridge owners sued the owners of the steam barge in state court for damages and, in response, the barge owners filed a petition for limitation in federal district court.[73] The Supreme Court distinguished *Richardson* from *Phenix*, relying on an intervening 1884 amendment to the Limitation Act. Granting that the Act in its original form "excluded both debts and liabilities for non-maritime torts,"[74] the Court found that the language of the 1884 amendment, which added the words "and liabilities," "add[ed] to the enumerated claims of the old law 'any and all debts and liabilities' not theretofore included," and thus changed the meaning of the Limitation Act.[75] In other words, in *Richardson* the Limitation Act provided an independent grant of federal admiralty jurisdiction because the destruction of the abutment was a "liability." The amendment, of course, had no application to *Phenix* since the injuries in both cases preceded Congress's changing of the language.[76]

The *Richardson* Court stated that construing the Limitation Act to extend to nonmaritime torts harmonized the statute with Congress's intent to protect the investment interests of vessel owners.[77] The case, however, is vague about what qualifies as a " non-maritime tort."[78] The clear example comes from the facts of the case—a vessel on a river crashed into a land-based structure causing considerable damage.[79] It is unclear whether other sorts of "non-maritime torts" were meant to be included and if so, to what extent. However, looking again to the purpose of the act—the protection of vessel owners' investments—the meaning that would harmonize the application of the Limitation Act with its purpose is that it is a jurisdictional basis in and of itself. If the purpose of the statute was to protect vessel owners and encourage investment in ships, it should not matter whether the vessel is at

70. Richardson v. Harmon, 222 U.S. 96, 106 (1911).

71. *Id.* at 99–100; *Phenix*, 118 U.S. at 611.

72. *Richardson*, 222 U.S. at 99–100.

73. *Id.* at 100.

74. *Id.* at 103.

75. *Id.* at 105. The 1884 amendment clarified that if more than one owner of a single vessel sought to limit liability under the Act, each owner was responsible only in proportion to his ownership interest. The actual meaning of the addition of the word "liabilities" in the 1884 amendment is unclear. Some scholars theorize that the addition changed the meaning of the Limitation Act and that the Court was merely looking for a way to distinguish *Phenix*. "[S]ince the Phenix case was not decided until 1886, and since no earlier case had suggested that the 1851 Act did not apply to non-maritime torts, it becomes most unlikely that Congress in 1884 was attempting to solve a non-existent problem." GILMORE & BLACK, *supra* note 4, at 846.

76. *Richardson*, 222 U.S. at 104.

77. *Id.*

78. *Id.*

79. *Id.* at 99–100.

sea, in a river, or tied to a dock when a loss occurs. The *Richardson* Court expressed concern that the interpretation under *Phenix* would "utterly ignore the fact that such a construction would leave an owner subject to a large class of obligations arising from non-maritime torts."[80]

The Court's decision in *Richardson* may be viewed as a correction of the interpretation adopted in *Phenix*, which focused the jurisdictional inquiry on the geographic locus of the event giving rise to a tort claim. Instead, *Richardson* centered the inquiry on the existence of a limitation action as its own proceeding, entirely separate from any state law tort claim.[81] This rule was confirmed by later cases, including the 1927 decision in *Hartford Accident & Indemnity Co. v. Southern Pacific Co.*,[82] in which the Supreme Court reiterated that a limitation petition supports admiralty jurisdiction on its own, apart from any consideration of the underlying tort claim.[83] Chief Justice Taft, writing for the Court in *Hartford*, stated that in the context of a proceeding for limitation of liability, "the court of admiralty has power to do what is exceptional in a court of admiralty—to grant an injunction, and by such injunction bring litigants, who do not have claims which are strictly admiralty claims, into the admiralty court."[84] It follows from this statement that the nature of the claims underlying the limitation action do not determine whether the admiralty court has jurisdiction over the limitation action—the petition for limitation itself determines the court's jurisdiction over a limitation proceeding.

Beginning in the early- and mid-twentieth century, courts, (including the Supreme Court) encountering questions of the Limitation Act's application to nonmaritime torts, treated *Richardson* as controlling precedent.[85] In 1917, for example, the Second Circuit interpreted *Richardson* to mean that "proceedings for limitation of a shipowner's liability from all demands . . . are within the general maritime law and admiralty jurisdiction, and that such a proceeding [is] an independent head of jurisdiction, without regard to whether the claims limited against [are] such as might have been sued upon in the admiralty or not."[86] In *No. 6*, the Standard Gas Light Company of New

80. *Id.* at 104.

81. *Id.* In *Hartford Accident & Indemnity Co. v. Southern Pacific Co.*, 273 U.S. 207, 216 (1927), the Court noted that the Limitation Act was meant to provide "the administration of equity in an admiralty court," implying that the equitable relief provided for in the Act is separate from any damages claims arising from an underlying tort.

82. 273 U.S. 207.

83. In *Hartford*, the Court stated that "[t]he jurisdiction of the admiralty court attaches *in rem* and *in personam* by reason of the custody of the *res* put by the petitioner into its hands." *Id.* at 217. Because the procedures for invoking the Limitation Act require the vessel owner to put the vessel or surety for the value of the vessel into a district court's possession, that court may exercise jurisdiction over the petition.

84. *Id.* at 218 (citing Providence & N.Y. S.S. Co. v. Hill Mfg. Co., 109 U.S. 578 (1883)).

85. *E.g.*, The No. 6, 241 F. 69, 71 (2d Cir. 1917); *In re* Houseboat Starship II, No. 2:05-0086, 2005 WL 3440788, at *1 (M.D. Tenn. 2005); *In re* Bernstein, 81 F. Supp. 2d 176 (D. Mass. 1999); *In re* Colonial Trust Co., 124 F. Supp. 73 (D. Conn. 1954); The Trim Too, 39 F. Supp. 271 (D. Mass. 1941); The Irving F. Ross, 8 F.2d 313 (D. Mass. 1923).

86. *No. 6*, 241 F. at 71.

York City sued the owner of the steam dredge No. 6 for damage to the company's gas pipes, which were buried beneath the Harlem River. The dredge had hit the pipes during a dredging operation, and the dredge owner, R.G. Packard Company, sought limitation in district court. Standard Gas Light claimed that because the underlying tort was nonmaritime,[87] admiralty jurisdiction did not exist, and the limitation act could not be brought in the federal district court. The Second Circuit stated that the petition was brought "in strict conformity with *Richardson v. Harmon*" and went on to say "[t]here is no doubt that [*Richardson*] is controlling authority here," noting the factual similarity between the cases.[88] In 1941, the Supreme Court in *Just v. Chambers*[89] again essentially reaffirmed *Richardson*, citing *Richardson* for the proposition that "limitation extends to tort claims even when the tort is non-maritime."[90]

D. *The Relatively Recent Controversy over the Limitation Act as a Basis of Admiralty Jurisdiction*

The Supreme Court's holding in *Richardson v. Harmon*—that the Limitation Act is an independent basis for admiralty jurisdiction—enjoyed respect for over seven decades.[91] More recent cases, however, have raised the question of the Limitation Act's ability to form the basis for admiralty jurisdiction anew—a controversy rekindled by a 1990 Supreme Court footnote that opened—or reopened, as the case may be—the question.[92]

The recent controversy over the enduring power of *Richardson* began in 1989 when the Supreme Court heard an appeal from a Seventh Circuit decision, *Sisson v. Ruby*, that had held the Limitation Act was not an independent basis for admiralty jurisdiction.[93] The Supreme Court granted certiorari and in *Sisson v. Ruby* reversed on other grounds, finding jurisdiction under the traditional two-part test for establishing admiralty jurisdiction over tort claims—the incident occurred on navigable waters and had some

87. "The rule that tort liability, including liability for wrongful death, is ordinarily determined under the lex loci delicti is generally applied in admiralty . . . ." 2 AM. JUR. 2D *Admiralty* § 104 (2004). The traditional rule of lex loci delicti requires that the law of the jurisdiction where the wrong occurred be applied. BLACK'S LAW DICTIONARY 930 (8th ed. 2004). At the time of *Richardson*, the place of the wrong was determined to be the place where the injury occurred, not where the negligence occurred. *See* Ala. Great S. R.R. v. Carroll, 11 So. 803 (Ala. 1892).

88. *No. 6*, 241 F. at 71.

89. 312 U.S. 383 (1941).

90. *Id.* at 386. Perhaps more importantly, the Court stated in passing that certain procedures specific to maritime law kick in "[w]hen the jurisdiction of the court in admiralty has attached through a petition for limitation." *Id.* This statement conveys the fact that the Court saw a petition for limitation of liability as a mechanism that could support admiralty jurisdiction on its own.

91. 222 U.S. 96 (1911); *see supra* Section I.C.

92. Sisson v. Ruby, 497 U.S. 358, 359 n.1 (1990).

93. *In re* Sisson, 867 F.2d 341 (7th Cir. 1989).

nexus to maritime activity.[94] Before issuing its decision, however, the Court asked the parties to brief the issue of whether it should reconsider *Richardson*. In its opinion, the Court explicitly decided *not* to revisit *Richardson*—or at least, not yet—and instead stated in a footnote that it was not reaching the question of whether, if the traditional test were not met, the Limitation Act would offer an independent basis for jurisdiction.[95] The footnote and the Court's questioning of *Richardson* were perceived by lower courts and some legal scholars as a statement by the Court that the issue was an open question rather than a previously decided question the Court had specifically declined to revisit.[96] Several Circuit Courts accepted what they perceived to be the Supreme Court's invitation to experiment with *Richardson* and went on to decide that the Limitation Act is no longer an independent basis for jurisdiction.[97] The Ninth Circuit, for example, summed up the sentiment of many courts when it wrote that *Richardson* is "a historical anomaly that cannot be fairly reconciled with modern admiralty jurisdiction."[98]

Despite the circuit decisions questioning *Richardson*, at least some District Courts have continued, even through the past few years, to regard *Richardson* as good law. The District Court of Massachusetts, for example, has held several times, most recently in 1999, that the Limitation Act is an independent basis for jurisdiction and that *Richardson*, for better or worse, is binding precedent.[99] The District Court of Connecticut and the District Court for the Middle District of Tennessee have held the same.[100]

Even in light of some recent moves to the contrary, *Richardson* still seems to represent viable precedent. As recently as 2001, even in the wake of several Courts of Appeal deciding that the Limitation Act is not, or is no longer, an independent basis for admiralty jurisdiction, the Supreme Court has made passing statements that assume jurisdiction to be grounded in the Limitation Act.[101] In *Lewis v. Lewis & Clark Marine, Inc.*, for example, Justice O'Connor, writing for a unanimous court, stated both that "the

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94. 497 U.S. at 361–62. In order to establish admiralty jurisdiction, a court must first ask if the incident occurred on navigable waters, and then whether it has a nexus to traditional maritime activity. *See also* Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 534 (1995).

95. *Sisson*, 497 U.S. at 359 n.1 ("We need not decide which party is correct, for even were we to agree that the Limited Liability Act does not independently provide a basis for this action, § 1333(1) is sufficient to confer jurisdiction.").

96. David Wright Charter Serv. of N.C., Inc. v. Wright, 925 F.2d 783, 785 (4th Cir. 1991).

97. *See* sources cited *supra* note 7.

98. Seven Resorts, Inc. v. Cantlen, 57 F.3d 771, 773 (9th Cir. 1995).

99. *In re* Bernstein, 81 F. Supp. 2d 176 (D. Mass. 1999); The Trim Too, 39 F. Supp. 271 (D. Mass. 1941); The Irving F. Ross, 8 F.2d 313 (D. Mass. 1923).

100. *In re* Colonial Trust Co., 124 F. Supp. 73 (D. Conn. 1954); *In re* Houseboat Starship II, No. 2:05-0086, 2005 WL 3440788 (M.D. Tenn. 2005). A recent case in the District Court of Connecticut, which is situated in the Second Circuit, ruled the opposite way from *In re Colonial Trust* and *The No. 6*, 241 F. 69, 71 (2d Cir. 1917). *See* Johnson v. Anderson, No. 3:06CV782, 2007 WL 735777 (D. Conn. 2007).

101. Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438, 452 (2001) ("[T]he Limitation Act granted the federal court jurisdiction over that action.").

Limitation Act granted the federal court jurisdiction"[102] and that "[t]he district courts have jurisdiction over actions arising under the Limitation Act."[103] Nonetheless, the Supreme Court's footnote in *Sisson*, and the decisions of the Seventh, Eighth, Ninth, and Eleventh Circuit Courts finding that the Limitation Act no longer provides an independent basis for admiralty jurisdiction, have raised as an important legal issue a question that was settled law for over seventy years.

II. THE LIMITATION ACT AS AN INDEPENDENT BASIS FOR ADMIRALTY JURISDICTION

After the *Sisson* decision in 1989, several Courts of Appeal took the Supreme Court's footnote in *Sisson* regarding its decision not to revisit the holding of *Richardson* to mean that the question of whether the Limitation Act is an independent basis for admiralty jurisdiction was open for reconsideration. Whether or not the footnote was meant to reopen the question, since *Sisson* the Seventh, Eighth, Ninth, and Eleventh Circuits have held that the Limitation Act does not form an independent basis for admiralty jurisdiction. Section II.A discusses the courts' proffered explanations for their decisions and argues that the reasoning on which the circuits relied was fundamentally flawed. Section II.B makes the affirmative case for finding that courts should read the Limitation Act to support admiralty jurisdiction.

A. *Proffered Reasons not to Read the Limitation Act as an Independent Basis for Admiralty Jurisdiction*

In the decisions[104] since 1989 in which the Seventh, Eighth, Ninth, and Eleventh Circuits have held that the Limitation Act does not create an independent basis for admiralty jurisdiction, the courts have repeatedly and consistently relied on flawed justifications that were originally advanced by the Seventh Circuit in *In re Sisson*,[105] the case that the Supreme Court later decided as *Sisson v. Ruby*. Having dismissed the importance and precedent of *Richardson*, these courts then went on to apply the locality-nexus test for torts to the events that underlay the respective petitions for limitations in each action in order to determine whether those petitions came within admiralty jurisdiction. The consensus among these circuits is, as the Seventh Circuit noted in *In re Sisson*, that "a proceeding under the Limitation of Liability Act will be cognizable in admiralty only when the underlying tort has a relationship to traditional maritime activity."[106]

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102. *Id.*

103. *Id.* at 454.

104. *See* sources cited *supra* note 7.

105. 867 F.2d 341 (7th Cir. 1989).

106. *Id.* at 350. *In re Sisson* was later reversed on other grounds—the Supreme Court found admiralty jurisdiction based on the locality-nexus test for torts. Sisson v. Ruby, 497 U.S. 358 (1990).

Most of the arguments the four Circuit Courts cite stem from the Seventh Circuit's decision in *In re Sisson*. In that case, the Seventh Circuit considered the lawsuit that developed after a yacht caught fire due to a malfunction in a washer-dryer unit on board.[107] The fire occurred while the yacht was moored at a recreational dock on Lake Michigan. Judge Cudahy, writing for the Seventh Circuit, noted that before the addition of the nexus prong of the locality-nexus test, the tort claim itself would have been within § 1333 admiralty jurisdiction.[108] However, because the boat was moored at the time, and thus not in navigation, the tort claim did not pass the locality-nexus test.[109] The Seventh Circuit also considered the yacht owner's claim that the Limitation Act was a separate basis for admiralty jurisdiction and concluded that it was not. The court based this decision on three arguments: (1) that the Extension of Admiralty Jurisdiction Act (also known as the Admiralty Extension Act (AEA)) eliminated the need for the Limitation Act to operate as an independent basis for admiralty jurisdiction, (2) that the locality-nexus requirements for § 1331 jurisdiction over torts should apply to petitions for limitation, and (3) that federal admiralty jurisdiction was not necessary because the Limitation Act could be raised as a defense in state court.[110] These three arguments, and the evolved forms of these arguments that emerged in later decisions of the Eighth, Ninth, and Eleventh Circuits, are based on flawed reasoning and are ultimately incorrect.[111]

The first reason the Seventh Circuit presented for its holding in *In re Sisson* was that the Admiralty Extension Act (AEA) of 1948[112] had "eliminate[d] the need and reason for the rule established by the case; for now torts are 'maritime' even when the damage occurs on land."[113] The court

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107. *In re* Sisson, 867 F.2d at 342.

108. *Id.*

109. The Supreme Court later reversed on this issue, holding that a moored boat still has a nexus to traditional maritime activity—and as such, that the tort at issue in *In re Sisson* fell within admiralty jurisdiction. *Sisson*, 497 U.S. 358.

110. *In re* Sisson, 867 F.2d at 349–50.

111. The Seventh Circuit and later the Eighth, Ninth, and Eleventh Circuits highlighted policy concerns about limiting vessel owners' liability in scenarios involving injury or loss of life and small recreational vessels worth a small amount of money. *See* sources cited *supra* note 7. While this kind of situation is of particular concern, other considerations may make this objection less troubling. If the owner was operating the vessel, he will be unable to demonstrate a lack of privity and knowledge and will not be entitled to limitation. If someone operated the vessel negligently with the owner's knowledge, a claim for negligent entrustment is possible. Additionally, while several of the circuits express concern that the original purpose of the Limitation Act does not justify its application to recreational vessels, amendments to the Act made in the 1930s appear to have expanded the Act to include recreational vessels. For an in-depth discussion of policy arguments, see White, *supra* note 4.

112. Pub. L. No. 80-695, 62 Stat. 496 (1948) (codified as amended at 46 U.S.C. app. § 740 (2006)) ("[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.").

113. 867 F.2d at 349. The Fourth Circuit in *Davis Wright Charter Service of North Carolina, Inc. v. Wright* held that *Richardson v. Harmon*, 222 U.S. 96 (1911), is and always has been limited to its facts. 925 F.3d 783, 785 (4th Cir. 1991). The Ninth Circuit in *Seven Resorts, Inc. v. Cantlen* reiterated that conclusion. 57 F.3d 771, 772–73 (9th Cir. 1995).

suggested that the "need and reason for the rule" announced in *Richardson* should be confined to the factual situation at issue in *Richardson*—that of a vessel on navigable waters causing damage to a land-based object. However, this explanation ultimately proves flawed because while the factual scenario in *Richardson* is now admittedly covered by the AEA, the *Richardson* Court's concern that a different construction of the Limitation Act "would leave an owner subject to a large class of obligations arising from non-maritime torts"[114] actually extends to factual scenarios beyond the one in *Richardson*.

The Limitation Act should be read to extend jurisdiction not only to damages caused to land-based objects, but to other varieties of nonmaritime torts. If the AEA eliminated the Limitation Act's ability to independently support admiralty jurisdiction, then some vessel owners would be left subject to obligations arising from nonmaritime torts such as collisions on nonnavigable waters and fires that take place while a vessel is undergoing repairs—a result that seems incompatible with the Act's purposes. Under the Seventh Circuit's construction, the vessel owner in *In re Sisson*, for example, would have been left without the benefit of the Limitation Act (had the Supreme Court not found that the underlying tort claim brought the case within admiralty jurisdiction) because the Seventh Circuit found the incident was not within the narrow scope of the AEA.[115]

The second rationale for the holding in *In re Sisson* maintains that even before the AEA, "jurisdiction under the Limitation of Liability Act—although purportedly invoking a separate basis of jurisdiction—did not ignore completely the requirements of admiralty jurisdiction under section 1333."[116] The court noted that even though for purposes of the Limitation Act the damages need not have occurred on navigable water, the vessel involved must have some relationship to navigability.[117] This reasoning led the Seventh Circuit to apply the locality-nexus test for establishing § 1333 admiralty jurisdiction over torts to the underlying tort claim in order to determine whether the petition for limitation was within admiralty jurisdiction.[118] However, admiralty jurisdiction in tort and admiralty jurisdiction under the Limitation Act are separate types of admiralty jurisdiction, and as such, the locality-nexus test should not be applied to the underlying tort when a limitation petition is filed—rather, the petition should be treated as

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114. Richardson v. Harmon, 222 U.S. 96, 104 (1911).

115. Note that, as Judge Cudahy's opinion mentioned, the vessel owner in *In re Sisson* would likely not have been entitled to limit his liability in the end because of the privity and knowledge requirement. 867 F.2d at 342. A vessel owner who gets into admiralty court based on the Limitation Act is not automatically entitled to limit liability—the right at issue is to have the claim for limitation adjudicated in federal court. *See* Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438, 440 (2001). This becomes important for those vessel owners being sued by multiple claimants in different courts.

116. 867 F.2d at 349.

117. *Id.*

118. *Id.*

its own proceeding that merits admiralty jurisdiction of its own accord.[119] Furthermore, vessels should not be thought to lose their maritime character at those moments in which they are not in navigation.[120]

The Seventh Circuit, and later the Fourth, Ninth and Eleventh Circuits, have applied the locality-nexus test for § 1333 admiralty jurisdiction over torts in order to determine whether admiralty jurisdiction is available for vessel owners petitioning to limit liability. Limitation petitions, however, are entirely separate proceedings from the underlying tort claims, and the locality-nexus test should not be applied.[121] When the Supreme Court first applied the Limitation Act in *Norwich*, the opinion explained that the Limitation Act is an admiralty proceeding on its own, meant to protect vessel owners, and resembles a maritime lien—a mechanism specific to maritime law which, even now, merits admiralty jurisdiction on its own.[122] As such, it makes little sense to apply the locality-nexus test designed for application to tort claims, even though had the tort not occurred, no petition for limitation would have been filed.[123] The Limitation Act in its original and current form allows an owner to limit his liability not only when facing tort damages, but also "those arising from any embezzlement, loss, or destruction of any property, goods, or merchandise shipped or put on board the vessel . . . ."[124] As such, the Limitation Act is not concerned solely with tort losses or confined by the locality-nexus test of admiralty jurisdiction over torts. The Limitation Act itself is part of the general maritime law, the outer boundaries of which go much further than the locality-nexus tort test.

Even if a nexus requirement were imposed upon Limitation actions, a vessel, whether in navigation or undergoing maintenance, necessarily has by its nature a connection to traditional maritime activity.[125] Similarly, limitation petitions have unique maritime character in themselves. When the Supreme Court first applied the Limitation Act in *Norwich*, the Court explained that the Limitation Act was an admiralty proceeding on its own, meant to protect vessel owners. It therefore resembled a maritime lien—a mechanism specific to maritime law which, even now, merits admiralty jurisdiction on its own.[126] Additionally, in *Sisson v. Ruby*, the Supreme Court

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119. *See supra* Marwedel, *supra* note 62, at 440 ("[A] federal court's admiralty jurisdiction in tort and its admiralty jurisdiction under the [Limitation] Act are necessarily two separate species of admiralty jurisdiction, the latter extending to any and all liabilities arising out of the conduct of the vessel."); Section I.B.

120. *See In re* Colonial Trust Co., 124 F. Supp. 73 (D. Conn. 1954).

121. *See* FED. R. CIV. P. SUPP. F.; Richardson v. Harmon, 222 U.S. 96 (1911); Norwich Co. v. Wright, 80 U.S. (13 Wall.) 104, 125 (1872).

122. *Norwich*, 80 U.S. at 123.

123. Marwedel, *supra* note 62, at 440.

124. 46 U.S.C.S. § 30505 (LexisNexis 2007).

125. "For the purpose of the limitation of liability statute it should not be held that [vessels] lose their maritime character . . . because they are temporarily stored ashore as a regular part of their maintenance." *In re* Colonial Trust, 124 F. Supp. at 75.

126. *Norwich*, 80 U.S. at 123.

stated that navigation was "an example, rather than . . . the sole instance, of conduct that is substantially related to traditional maritime activity."[127]

In deciding whether to import the § 1333 locality-nexus test, the Seventh Circuit also considered the policy reasons behind the Supreme Court's decisions in *Executive Jet Aviation, Inc. v. City of Cleveland*[128] and *Foremost Insurance Co. v. Richardson*.[129] Before *Executive Jet*, the test for jurisdiction under § 1333 was a pure locality test.[130] In *Executive Jet*, the Supreme Court considered a case in which a plane crashed into the Hudson Bay, perhaps because of an encounter with a flock of birds.[131] The Court held that because the airplane had no relationship to traditional maritime activity, admiralty jurisdiction did not exist in the case. Under the previous locality-only test, the case would have come under admiralty jurisdiction.[132] The Court's goal in adding the nexus prong was to ensure that the test would bring only those cases with a relationship to maritime law into admiralty jurisdiction.

Later, in *Sisson v. Ruby*, the Supreme Court noted that "our holding in *Executive Jet* was limited by its terms to cases involving aviation torts" but that the reasoning in that case justified applying the locality-nexus test to other types of claims as well.[133] In *Foremost*, the Court expanded the reach of *Executive Jet*, holding that a collision between two pleasure boats on navigable waters satisfied the nexus prong because of the effect it could have on maritime commerce.[134] In *In re Sisson*, the Seventh Circuit decided that the policies behind *Executive Jet*, which attempted to narrow admiralty jurisdiction to include only those cases with a relationship to maritime activity, also suggested that Limitation Act cases should be constrained by the new nexus requirement.[135]

The language of the Limitation Act makes no mention of a navigability requirement and, as such, the test that has developed under § 1333 is ill-fitted to determining jurisdiction under the Limitation Act. The Limitation Act is only one of many statutes that support admiralty jurisdiction aside from § 1333. Unlike the Limitation Act, other statutes that act as a basis for admiralty jurisdiction specifically include a requirement of navigation.[136] For example, the AEA includes as a condition of admiralty jurisdiction that damage be done by a vessel on navigable water.[137] The Death on the High

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127. Sisson v. Ruby, 497 U.S. 358, 366 (1990).

128. 409 U.S. 249 (1972).

129. 457 U.S. 668 (1982).

130. *Sisson*, 497 U.S. at 360.

131. *Executive Jet*, 409 U.S. 249.

132. *Id.*

133. *Sisson*, 497 U.S. at 361.

134. *Foremost*, 457 U.S. 668.

135. *In re* Sisson, 867 F.2d 341, 349–50 (7th Cir. 1989).

136. *See, e.g.*, Admiralty Extension Act of 1948, Pub. L. No. 80-695, 62 Stat. 496 (codified as amended at 46 U.S.C. app. § 740 (2006)).

137. *Id.*

Seas Act deals specifically with occurrences on the high seas—another sort of locality concern.[138] By contrast, the Limitation Act refers to both "seagoing vessels" and to "vessels used on lakes or rivers or in inland navigation,"[139] a phrase that may be construed either as specifying locality or type of vessel. Either way, the Limitation Act is silent on the issue of navigability and, as such, importing the standard of navigation from § 1333 jurisprudence is unnecessary. The Limitation Act is clearly separate from § 1333 jurisdiction and the locality-nexus test for determining § 1333 jurisdiction over torts should not be applied to petitions for limitations, which are entirely separate proceedings.[140] The navigability requirement is generally phrased in terms of commerce—the idea being that waters are navigable only if they support commerce between different states—but the Supreme Court has previously held that admiralty jurisdiction is not constrained by the Commerce Clause, but entirely separate from it.[141]

The Seventh Circuit's third rationale in *In re Sisson*, that "the claims of other boat owners and of the owner of the marina could 'plainly' be heard in state court without the intrusion of traditional maritime law concepts,"[142] is also unpersuasive. The Seventh Circuit cited federalism concerns and noted that state courts could apply state law to any claims that did not come under admiralty jurisdiction without disrupting traditional maritime law but did not specifically state whether the state courts could also consider Limitation Act issues.[143] While state and federal courts have concurrent jurisdiction in many areas of admiralty law, the possibility of leaving limitation actions to the state courts has been more or less foreclosed by a line of cases beginning with *Norwich* and culminating in *Lewis v. Lewis & Clark Marine, Inc.* in 2001.[144] The *Norwich* court stated that it was "evident that the State courts have not the requisite jurisdiction" to hear Limitation Act cases.[145] Indeed, it

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138. Death on the High Seas Act, 46 U.S.C. app. § 761 (2006).

139. Limitation Act, 46 U.S.C.S. § 30502 (LexisNexis 2007).

140. *See* Marwedel, *supra* note 62, at 440.

141. *See* Crowell v. Benson, 285 U.S. 22, 55 n.18 (1932) ("[Congress'] power [to revise the maritime law] is distinct from the authority to regulate interstate or foreign commerce and is not limited to cases arising in that commerce."); The Propeller Genesee Chief v. Fitzhugh, 53 U.S. (12 How.) 443 (1852).

142. *In re* Sisson, 867 F.2d 341, 350 (7th Cir. 1989).

143. *See id.* at 349–50. The Seventh Circuit seemed reluctant to allow the Limitation Act to extend to vessel owners in such circumstances at all, not just to disallow jurisdiction based on the Act. However, Congress enacted the Limitation Act and several amendments and the court must apply them as written.

144. *See* Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438 (2001); Lake Tankers Corp. v. Henn, 345 U.S. 147 (1956); Langes v. Green, 282 U.S. 531 (1931); Norwich Co. v. Wright, 80 U.S. (13 Wall.) 104 (1872). These cases carve out limited circumstances in which concursus under the Limitation Act is not necessary and state courts may hear claims—first, when the total of claims pressed against a vessel owner is less than the amount in the Limitation fund, and second, when there is only a single claimant. The cases necessarily imply that other cases must be heard in federal court.

145. *Norwich*, 80 U.S. at 123.

seems difficult to conceive of a way the benefit of the Limitation Act—limiting liability to the value of the vessel—could be achieved without the concursus proceeding, which ensures all claims against the vessel are heard at once.[146] Without such a proceeding, several different courts could hear several different claims against a vessel owner and award damages totaling more than the vessel's value. A concursus proceeding is unlikely to occur in a court without the power to stay any court proceedings that may have been brought against the vessel owner.

Even if the logistics of handling Limitation Act issues in state court could be orchestrated, moreover, in *Lewis*, Justice O'Connor, writing for the Court, stated that the Limitation Act "grants vessel owners the right to seek limited liability *in federal court* for claims of damage aboard their vessels."[147] A split has emerged among state and district courts regarding whether a state court even has jurisdiction to hear issues relating to the Limitation Act if a defendant attempts to raise its substantive protections as a defense in a state court proceeding.[148]

B. *Why the Limitation Act Should Continue to Be Read as a Basis for Admiralty Jurisdiction*

In addition to the simple stare decisis value of continuing to apply *Richardson*, which held sway for seventy years, there are at least three reasons why courts should continue to read the Limitation Act as an independent basis for federal admiralty jurisdiction. First, reading the Limitation Act as providing such jurisdiction would achieve the goal, effectively stated in *Richardson*, of harmonizing jurisdiction with the purpose of the Limitation Act itself. Second, failing to read the Limitation Act as an independent basis for admiralty jurisdiction would lead to nonsensical distinctions regarding which vessel owners may invoke the Act. For example, the owners of identical vessels which were involved in identical incidents, one on a navigable lake and one on a nonnavigable lake, would not have the same remedy available to them—the former could invoke the Limitation Act, while the latter could not. Third, if the Limitation Act is not read as an independent basis for admiralty jurisdiction, then part of the statute (the inclusion of "lakes, rivers and navigable waters") is rendered superfluous. Reading the Act as an independent basis for admiralty jurisdiction, in contrast, gives each word of this phrase meaning.

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146. *See* Providence & N.Y. S.S. Co. v. Hill Mfg. Co., 109 U.S. 578, 595–96 (1883) ("[I]t is obvious on the face of the thing, that proceedings for limited liability cannot be participated in by two jurisdictions, without interference and conflict between them . . . and cannot have any useful effect if a different court may . . . execute a separate judgment independent of, and perhaps contrary to, that of the court to which the inquiry properly belongs.").

147. *Lewis*, 531 U.S. at 440 (emphasis added); *see also* Marwedel, *supra* note 62, at 441 ("Limitation of liability is not available in state court, because the right exists only by federal statute and is enforceable only in federal court.").

148. *See, e.g.*, Howell v. Am. Cas. Co., 691 So. 2d 715 (La. Ct. App. 1997); Mapco Petroleum, Inc. v. Memphis Barge Line, Inc., 849 S.W.2d 312 (Tenn. 1993).

The first justification for reading the Limitation Act as providing an independent basis for admiralty jurisdiction is that such a reading effectively harmonizes jurisdiction with the original purpose of the Act. Scholars and courts generally agree that the goal of the Limitation Act was the protection of shipowners' investments;[149] as such, it seems irrelevant whether potentially ruinous losses took place on land or at sea, or on navigable waters or nonnavigable waters.[150] The Limitation Act accomplished this goal by providing an equitable remedy to prevent owners from being crushed by liability for damages that were beyond their control to prevent.[151] The Supreme Court, in the absence of specific instruction from Congress, decided twenty years after the Limitation Act was enacted that limitation actions should be heard by the admiralty courts, which were "best suited" to adjudicate them.[152] The Court also noted that state courts did not have jurisdiction to hear claims for limitation.[153]

However, when some Federal Courts of Appeal attempt to limit the scope of the Limitation Act to cases that have a separate basis for admiralty jurisdiction[154] they deny the benefit of the Limitation Act to a class of vessel owners who could otherwise claim it. Reading the Limitation Act to confer admiralty jurisdiction on its own brings this group of vessel owners back within the reach of the statute, and so matches the goal and rationale of the Act.[155] Put another way, the Limitation Act was *intended* to protect all vessel owners, not merely those owners who happened to own vessels that were on navigable waters at the time an accident occurred. While the Seventh, Eighth, Ninth, and Eleventh Circuits no longer see much value in protecting all owners of vessels, the proper remedy for their concerns is legislative. Until and unless *Congress* agrees with their conclusions, or until and unless the courts conclude that Congress did not intend to protect all vessel owners, the courts should continue to provide the sorts of protection that Congress apparently had in mind.

Admittedly, the Seventh, Eighth, Ninth, and Eleventh Circuits' interpretation of the Limitation Act as not providing an independent basis for

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149. *See supra* Section I.B. While the importance of the original policy goals of the Limitation Act have declined since 1851, the Limitation Act has been amended several times, either to clarify or to expand the reach of the Act. As such, the original purpose may still inform the application of the Act.

150. The purpose of the Limitation Act is expressed eloquently by Justice Bradley, who wrote "The great object of the law was to encourage ship-building and to induce capitalists to invest money in this branch of industry. Unless they can be induced to do so, the shipping interests of the country must flag and decline." *Norwich*, 80 U.S. at 121.

151. *Id.* The goal of protecting investors from financial ruin raises less of an issue since the marine insurance industry came into being.

152. *Id.*; *see supra* Section I.B.

153. *Norwich*, 80 U.S. at 123.

154. *See* cases cited *supra* note 7.

155. Marwedel, *supra* note 62, at 442 ("Conditioning application of the Act on the existence of admiralty jurisdiction prevents the Act's utilization in nonmaritime cases and clearly interferes with the goals of Congress in enacting the Act.").

admiralty jurisdiction might, under at least one set of circumstances, continue to provide much the sort of protection Congress had in mind. If vessel owners could take advantage of the substantive benefit of the Limitation Act—limiting their liability—by raising the Limitation Act as a defense in a state court action, for example, admiralty jurisdiction over limitation petitions would not be as crucial. State courts in at least two states, Tennessee and Louisiana, have decided that they do have jurisdiction to consider issues related to the Limitation Act if no action is filed under 46 U.S.C. § 30511, which codifies the requirement that a vessel owner bring a petition in a federal district court within six months of written notice of a claim.[156] The substantive portion of the Limitation Act is codified at 46 U.S.C. § 30505, and the state courts in Tennessee and Lousiana determined that so long as a defendant raised § 30505 as a defense, they would consider it.[157] These cases, however, did not dispute that once a petition for limitation is filed in federal district court, the federal court has exclusive jurisdiction over the proceeding.[158] Indeed, this approach (federal, rather than state-defense, jurisdiction) may nonetheless be necessary, as a state court would not have the power to stay parallel proceedings in another state's courts or in a federal court with diversity jurisdiction and one of the benefits of the Limitation Act is to prevent simultaneous incompatible judgments. In the absence of the federal courts' authority under the Limitation Act to suspend other federal or state actions, defendants could end up paying each of the claimants in any action the full value of the vessel, which would defeat the purpose of the Limitation Act. Alternatively, if one court chose to consider the Limitation Act as a defense after another judgment had been rendered, the defendants might have to pay the entire value of the vessel to one claimant, leaving nothing for the others.

A second reason for reading the Limitation Act as providing an independent basis for admiralty jurisdiction is that failing to read the Act in such a way would lead to nonsensical distinctions regarding which vessel owners may invoke the Act. In *Richardson*, the Court sought to harmonize the Limitation Act with the Act's purpose of protecting vessel owners' investments.[159] Whatever some modern courts think of the *Richardson* decision, the *Richardson* Court's reading of the Act is clearly supported by the statute's apparent lack of concern with navigable waters or locality. The Limitation Act originally did not apply to "the owner or owners of any canal boat, barge, or lighter, or to any vessel of any description whatsoever, used in rivers or inland navigation."[160] The focus of the Act when initially enacted in

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156. *See* Howell v. Am. Cas. Co., 691 So. 2d 715 (La. Ct. App. 1997); Mapco Petroleum, Inc. v. Memphis Barge Line, Inc., 849 S.W.2d 312 (Tenn. 1993).

157. Christopher S. Morin, Comment, *The 1851 Shipowners' Limitation of Liability Act: A Recent State Court Trend to Exercise Jurisdiction Over Limitation Rights*, 28 STETSON L. REV. 419, 435–47 (1998).

158. *Id.*

159. Richardson v. Harmon, 222 U.S. 96 (1911).

160. Limitation Act, ch. 43, § 7, 9 Stat. 635, 636 (1851).

1851 was on protecting vessel owners' investments in order to build a merchant marine to rival England's.[161] When the statute was amended in 1884, the focus had shifted away from international shipping and toward developing a shipbuilding industry in the United States.[162] Even later, in 1936, the statute was amended to include the types of vessels used on "lakes, rivers, or in inland navigation."[163] The statutory language, in its current form, is not concerned with where a vessel owner's loss occurred or whether that location brings the claim into admiralty; it is only concerned with protecting the investments of owners in their vessels, whether they be ocean liners on the high seas or barges on the Mississippi.[164] Reading the Limitation Act to focus on navigability instead of vessel ownership would lead to a somewhat random application of the Act—a yacht owner who takes his boat out on a nonnavigable water such as the Lake of the Ozarks in Missouri would be unable to invoke the Limitation Act in case of an accident,[165] while a yacht owner who takes his boat out on a navigable water such as Lake Michigan would.

A third reason for reading the Limitation Act as providing an independent basis for admiralty jurisdiction is that failing to read the Act in such a way would render the inclusion of "lakes, rivers and navigable waters" in the statute superfluous. Assuming that Congress would not have drafted superfluous language into an Act, such a reading would therefore seem to be incomplete or erroneous.[166] In its current form, the Limitation Act applies "to seagoing vessels and vessels used on lakes or rivers in inland navigation."[167] If the Limitation Act only applies when the underlying claim occurred on navigable waters, the words "lakes or rivers" are meaningless in the context of the statute.[168] This language seems to clarify that the Limitation Act's scope should not be limited by the locality of torts causing losses; such a limitation would import a navigability requirement into the Limitation Act. While it may seem counterintuitive that Congress would have the power to give the federal courts jurisdiction over bodies of water contained entirely within one state, it has long been held that admiralty jurisdiction,

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161. CONG. GLOBE, 31st Cong., 2d Sess. 331–32 (1851).

162. 15 CONG. REC. 3427–31 (1884).

163. Act of June 5, 1936, ch. 521, § 4, 49 Stat. 1479, 1481.

164. 46 U.S.C.S. § 30502 (LexisNexis 2007).

165. *See* Three Buoys Houseboat Vacations U.S.A. Ltd. v. Morts, 921 F.2d 775, 780 (8th Cir. 1990).

166. *See, e.g.*, Exxon Corp. v. Hunt, 475 U.S. 355, 369 n.14 (1986) ("Moreover, if the phrase is not to be read as a unit, but split, as the Solicitor General contends, into 'claims for any costs of response or damages' and 'claims which may be compensated under this subchapter,' the latter phrase becomes surplusage."); WILLIAM N. ESKRIDGE, JR. ET AL., CASES AND MATERIALS ON LEGISLATION 833 (3d ed. 2001) (citing *Exxon Corp.*, 475 U.S. 355).

167. 46 U.S.C.S. § 30502 (LexisNexis 2007).

168. *See supra* note 5.

with its nearly untraceable boundaries, is not limited by, and is constitutionally distinct from, the commerce power.[169]

CONCLUSION

The Limitation Act should remain an independent basis for admiralty jurisdiction. This is the only way to give effect to the purpose of the statute—the protection of investment in shipping—in light of case law which has foreclosed the option of adjudicating vessel owners' claims outside of admiralty court. The Supreme Court has declined to reconsider *Richardson*, which established that the Limitation Act is an independent basis for admiralty jurisdiction in all cases where vessel owners wish to invoke it, not just when boats crash into an object on land.[170] Given the Court's reluctance to revisit *Richardson*, it is inappropriate (apart from any independent reasons for finding that the Limitation Act provides an independent source of federal admiralty jurisdiction) to read the Court's single footnote in *Sisson* as issuing an open invitation for the Courts of Appeal to ignore *Richardson* precedent. While there are arguably good public policy reasons for holding that the Limitation Act does not independently support admiralty jurisdiction, these reasons are not strong enough to justify a departure from *Richardson*'s long-standing precedent or to outweigh the arguments for continuing to allow admiralty jurisdiction based on the Limitation Act.

169. Crowell v. Benson, 285 U.S. 22, 55 n.18 (1932); The Propeller Genesee Chief v. Fitzhugh, 53 U.S. (12 How.) 443 (1852).

170. Sisson v. Ruby, 497 U.S. 358, 359 n.1 (1990).