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Ii. Admiralty

Section 8 tenants.[119] The Fourth Circuit clearly has expressed that the proper procedure for termination of tenancy is state eviction procedures.[120]

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II. ADMIRALTY

A. *Abolition of Interspousal Immunity in Admiralty Torts*

Article III, section two of the United States Constitution provides the basis for admiralty jurisdiction.[1] The federal district courts exercise original jurisdiction in maritime cases.[2] Courts sitting in admiralty must

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[119] *See* 675 F.2d at 1344 (landlord may not evict Section 8 tenants in retaliation or arbitratily); *supra* note 72 (proscription against arbitrary and retaliatory actions).

[120] 675 F.2d at 1348.

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[1] U.S. CONST. art. III, § 2. The United States Constitution extends admiralty jurisdiction to all cases in law and equity involving maritime law. *Id.*

[2] 28 U.S.C. § 1333 (1976). Admiralty jurisdiction extends to persons and ships claiming damages for torts and breach of contract. *Ex parte* Easton, 95 U.S. 68, 68-73 (1877). Admiralty law covers both interstate and foreign commerce. London Co. v. Industrial Comm'n, 279 U.S. 109, 124 (1928). District courts exercise admiralty jurisdiction over both commercial and recreational navigation. *Id.* at 123-25. The general requirement for admiralty jurisdiction is that the claim must arise on the navigable waters of the United States. The Plymouth, 70 U.S. (3 Wall.) 20, 36 (1866). For the purposes of admiralty jurisdiction, navigable waters are any waterways that are usable as arteries of commerce. Adams v. Montana Power Co., 528 F.2d 437, 440 (9th Cir. 1975). Navigable waters include oceans, lakes, and rivers. Lee v. Licking Valley Coal Digger Co., 209 Ky. 780, 781, 273 S.W. 542, 543 (1925).

Maritime law has evolved through the common law of the world's commercial nations. Guerrido v. Alcoa S.S. Co., 234 F.2d 349, 352 (1st Cir. 1956). Maritime law essentially intertwined with international law. *Id.* The international nature of admiralty necessitates the uniform development of maritime law. *Id.* One of the purposes of the framers of the constitution in establishing admiralty jurisdiction was to insure uniform application of maritime rules throughout the United States. *Id.* The district courts establish and enforce maritime rules that are applicable throughout all of the districts under United States admiralty jurisdiction. *Id.* District court opinions in admiralty cases have greater precedential value outside the district than district court opinions for cases not in admiralty jurisdiction. *Id.* Admiralty jurisdiction, therefore, differs from other forms of jurisdiction. *Id.*

Admiralty law is not a complete and self-contained system. Just v. Chambers, 312 U.S. 383, 388 (1941). In the absence of clear precedent from maritime law or rules, courts look to state law for guidance. *Id.* State and common law principles, however, are not binding on admiralty courts. Southern Pacific Co. v. Jensen, 244 U.S. 205, 215 (1917). If an admiralty court finds state or common law inappropriate, the court may fashion a new rule to adjust to the changing needs of society and maritime commerce. Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 628 (1959).

Originally, admiralty jurisdiction did not depend upon the nature of the activity. St.

balance the national policy of uniformity in maritime laws[3] with the par-

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Hilaire Moye v. Henderson, 496 F.2d 973, 976 (4th Cir.), *cert. denied*, 419 U.S. 884 (1974). The locality of the incident was the basis for jurisdiction. *See, e.g.*, Victory Carriers, Inc. v. Law, 404 U.S. 202, 205 (1971) (longshoreman injured by forklift on pier not entitled to maritime jurisdiction); Grant Smith-Porter Ship Co. v. Rohde, 257 U.S. 469, 476 (1922) (admiralty jurisdiction upheld where workman suffered injuries while constructing uncompleted vessel harbored on navigable waters); Weinstein v. Eastern Airlines, Inc., 316 F.2d 758, 761 (3d Cir. 1963) (locality is sole jurisdiction test where aircraft crashes into navigable waters).

The Supreme Court questioned the wisdom of a pure locality test in *Executive Jet Aviation, Inc. v. City of Cleveland*. 409 U.S. 249, 261 (1972). In *Executive Jet*, the Court found that an airplane crash in navigable waters did not bear a sufficient relationship to traditional maritime activity to invoke admiralty jurisdiction. *Id.* at 268. Even before *Executive Jet*, some courts found that admiralty jurisdiction depended on a combination of the locality requirement and the inquiry of whether the claim had a significant relation to maritime navigation and commerce. *See, e.g.*, Peytavin v. Government Employees Ins. Co., 453 F.2d 1121, 1127 (5th Cir. 1972) (admiralty jurisdiction denied where plaintiff suffered whiplash injuries in automobile accident while waiting on a floating pontoon at ferry landing); Chapman v. City of Grosse Pointe Farms, 385 F.2d 962, 966 (6th Cir. 1967) (no admiralty jurisdiction where plaintiff dove from a pier into shallow water); Smith v. Guerrant, 290 F. Supp. 111, 114-15 (S.D. Tex. 1968) (suit in admiralty dismissed where crane dropped forklift into waters of harbor); McGuire v. City of New York, 192 F. Supp. 866, 868 (S.D.N.Y. 1961) (admiralty jurisdiction disallowed for plaintiff's injuries on public beach).

[3] Winter v. Eon Prod., Ltd., 433 F. Supp. 742, 744 (E.D. La. 1976). Congress intended that admiralty law should be uniform in order to conform with the laws of other maritime nations in the interest of congenial international relations. Richards v. Blake Builders Supply, Inc., 528 F.2d 745, 747 (4th Cir. 1975). Even if an action originates in state court, the fact finder must turn to admiralty law to determine the rights and liabilities of those injured on navigable waters. *See* Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 628 (1959) (visitor fell down stairway on vessel berthed at pier); Carlisle Packing Co. v. Sandanger, 259 U.S. 255, 259 (1922) (plaintiff injured on motorboat on navigable waters).

The "saving to suitors" clause of 28 U.S.C. § 1333 (1976) creates an exception to the exclusive admiralty jurisdiction of the federal district courts. Paduano v. Yamashita Kisen Kabushiki Kaisha, 221 F.2d 615, 617 (2d Cir. 1955). All plaintiffs seeking remedies other than admiralty remedies are entitled to bring action in state courts. *Id.* The purpose of the "saving to suitors" clause is to prevent deprivation of a choice of remedies and to allow full recovery under common law principles. Ramos v. Beauregard, Inc., 423 F.2d 916, 918 (1st Cir.), *cert. denied*, 400 U.S. 865 (1970). If a plaintiff brings a maritime action in federal court based on diversity jurisdiction the uniform system of maritime law still governs the action. Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 410-11 (1953). When a state law undermines a federally granted admiralty right, the court must apply the law that follows the admiralty principles of national uniformity. Bell v. Tug Shrike, 332 F.2d 330, 332 (4th Cir. 1964).

National uniformity in admiralty law is a constitutionally based principle. *See* Moragne v. State Marine Lines, 398 U.S. 375, 402 (1970) (right to recover for wrongful death under general maritime law); The Lottawanna, 88 U.S. (21 Wall.) 558, 575 (1874) (constitutional basis for uniformity in admiralty). State law cannot contravene the characteristic uniformity of admiralty law. St. Hilaire Moye v. Henderson, 496 F.2d 973, 980 (8th Cir.), *cert. denied*, 419 U.S. 884 (1974). Most contradictions with established admiralty principles that result from application of state law constitute disruptions of international and interstate relations. *Id.*; J. Ray McDermott and Co., Inc. v. Vessel Morning Star, 457 F.2d 815, 818 (5th Cir.) (en banc), *cert. denied*, 409 U.S. 948 (1972). Even if the state law does not contradict directly an established admiralty principle, the admiralty rule will preempt the state law to prevent significant disruption of national uniformity. Alva S.S. Co. v. City of N.Y., 405 F.2d 962, 970

ticular interests of the states.[4] States traditionally govern the domestic relations of domiciliaries of the state.[5] Many states apply the doctrine of interspousal immunity, a common law doctrine that prohibits lawsuits between husband and wife, to prevent disruption of domestic relations.[6]

Since domestic relations traditionally have been within the province of the states, state law controls the application of interspousal immunity.[7] Circumstances, however, may require admiralty courts to weigh the policy of national uniformity against the state's interest in interspousal immunity.[8] The United States Supreme Court has not ad-

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(2d Cir. 1969); *see* The Roanoke, 189 U.S. 185, 196-97 (1903) (court refused to impose state lien on ship repairs); Currie, *Federalism and the Admiralty: "The Devil's Own Mess,"* 1960 S. CT. REV. 158, 166-67 (sufficient disruption of admiralty uniformity precipitates preemption of state statutes). *See also* U.S. CONST. art. VI, cl. 2 (supremacy clause).

[4] Winter v. Eon Prod., Ltd., 433 F. Supp. 742, 744 (E.D. La. 1976). State regulatory power exercised with federal consent or acquiescence indicates congressional intent to leave the regulated area within state control. *See* Wilburn Boat Co. v. Fireman's Ins. Co., 348 U.S. 310, 314 (1955) (lack of congressional regulation of marine insurance contracts and marine insurance warranties led to application of state law instead of federal admiralty rule); *infra* text accompanying notes 43-45 (state law may apply in admiralty).

[5] DeSylva v. Ballentine, 351 U.S. 570, 580 (1956). Domestic relations include all matters of the family or household, including divorce, separation, custody, support, and adoption. BLACK'S LAW DICTIONARY 435 (5th ed. 1979). There is no federal law of domestic relations. DeSylva v. Ballentine, 351 U.S. at 580; Bell v. Tug Shrike, 332 F.2d 330, 334 (4th Cir. 1964). State law properly controls cases in admiralty when no maritime or explicit common law exists on the issue and the state law does not disrupt commerce. 332 F.2d at 334. State law normally governs familial relationships. *Id.* If the common law is incompatible with an admiralty rule, policy, or custom, however, courts with admiralty jurisdiction may establish a new administrative doctrine. *Id.* at 332. Where the issue is purely local, state law is the proper authority for remedies and liabilities in the absence of a preempting federal statute or judicially created rule. *See, e.g.*, Kossick v. United Fruit Co., 365 U.S. 731, 738-39 (1961) (verbal agreement for seaman to accept hospital care sufficiently related to maritime concerns to be within admiralty jurisdiction); Romero v. International Terminal Operating Co., 358 U.S. 354, 362 (1958) (admiralty law does not apply to claims against foreign shipowner); Wilburn Boat Co. v. Fireman's Fund, 348 U.S. 310, 316-17 (1955) (state law governs marine insurance contracts and warranties).

[6] Byrd v. Byrd, 657 F.2d 615, 618 (4th Cir. 1981). At one time, interspousal immunity was the common law doctrine applied in all states. *Id.*; Lusby v. Lusby, 283 Md. 334, 335-36, 390 A.2d 77, 78-79 (Md. App. 1978). The doctrine of interspousal immunity was based on the legal fiction that a man and woman become one person upon marriage. Lusby v. Lusby, 283 Md. at 335-36, 390 A.2d at 78-79. Any legal identity the female may have had as a single woman became suspended during marriage. *Id.* at 335-36, 390 A.2d 78-79. The wife could not sue or be sued without her husband's consent and without bringing suit in his name. *Id.* at 335-36, 390 A.2d at 78-79. The fiction of the husband and wife as "one flesh" made a tort between spouses morally and conceptually objectionable. Saunders v. Hill, 57 Del. 519, 520, 202 A.2d 807, 808 (1964).

[7] Simpson v. Simpson, 490 F.2d 803, 806 n.7 (5th Cir.), *cert. denied*, 419 U.S. 897 (1974); *see supra* note 5 (states traditionally govern domestic relations); *supra* note 6 (interspousal immunity).

[8] Byrd v. Byrd, 657 F.2d 615, 617 (4th Cir. 1981); *see also supra* note 3 (admiralty policy of national uniformity); *supra* notes 5 and 6 (state interest in interspousal immunity).

dressed whether interspousal immunity should apply to admiralty torts.[9] In *Byrd v. Byrd*,[10] the Fourth Circuit considered whether interspousal immunity applies within admiralty jurisdiction to prevent one spouse from bringing a tort action against the other for injuries sustained in a pleasure craft accident.[11]

In *Byrd*, the plaintiff, Elsie Byrd, brought suit against her husband, William Byrd, for negligence under admiralty and for negligent violations of the Federal Boat and Safety Act of 1971[12] and the Federal Inland Navigation Rules.[13] The plaintiff was a passenger on the defendant's cabin cruiser.[14] Mrs. Byrd fell from a deck chair on the bridge of the boat to the lower deck.[15] The plaintiff alleged that the defendant's negligence in failing to fasten the chair to the bridge or to provide a guard rail caused her to sustain severe and permanent injuries.[16] The defendant conceded that the court had jurisdiction[17] but denied any liability, asserting the

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[9] *See* Byrd v. Byrd, 657 F.2d 615, 616 (4th Cir. 1981).

[10] 657 F.2d 615 (4th Cir. 1981).

[11] *Id.* at 616.

[12] 46 U.S.C. § 1461(d) (1976); *see* 657 F.2d at 616 n.3. The Federal Boat and Safety Act of 1971 provides in part:

> No person may use a vessel . . . in a negligent manner so as to endanger the life, limb, or property of any person. Violations of this subsection involving use which is grossly negligent, subject the violator . . . to the criminal penalties prescribed in section 1483 of this title.

46 U.S.C. § 1461(d) (1976). Congress intended section 1461 to provide a private cause of action for all violations of the enumerated prohibited acts. S. REP. No. 92-248, 92nd Cong., 1st Sess. 2, *reprinted in* [1971] U.S. CODE CONG. & AD. NEWS 1333, 1342. The burden of going forward then shifts from the plaintiff to the defendant to raise an affirmative defense. *Id.*

[13] 33 U.S.C. § 154 (1976) *repealed by* 94 Stat. 3435 (1980); 657 F.2d at 616 n.3. The Federal Inland Navigation Rules are designed to prevent collisions on harbors, rivers and other inland waters. 33 U.S.C. § 154 (1976) *repealed by* 94 Stat. 3435 (1980). The rules give rise to a private cause of action for accidents occurring on navigable waters. *Id.*

[14] Brief for Appellant at 4, Byrd v. Byrd, 657 F.2d 614 (4th Cir. 1981) [hereinafter cited as Brief for Appellant]; Brief for Appellee at 1, Byrd v. Byrd, 657 F.2d 615 (4th Cir. 1981) [hereinafter cited as Brief for Appellee].

[15] 657 F.2d at 616.

[16] *Id.*

[17] *Id.* Admiralty jurisdiction has not always encompassed tortious injuries resulting from pleasure boat accidents. *See* Crosson v. Vance, 484 F.2d 840, 842 (4th Cir. 1973). In *Crosson*, the Fourth Circuit ruled that a claim which arose from a pleasure craft accident had no relation to domestic or foreign shipping. *Id.* The *Crosson* court dismissed the personal injury claim for lack of a sufficient connection with shipping to invoke admiralty jurisdiction. *Id.* at 843. The Fourth Circuit in *Crosson*, however, explicitly narrowed its decision to cases involving water skiers and not every pleasure craft case. *Id.* at 842.

Courts apply admiralty jurisdiction dpending on the particular circumstances of the case. *See, e.g.*, Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249, 261 (1972) (airplane crash in navigable waters insufficient for admiralty jurisdiction); Maryland v. Amerada Hess Corp., 356 F. Supp. 975, 976-77 (D. Md. 1973) (airplane accidents provide no basis for admiralty jurisdiction); Adams v. Montana Power Co., 354 F. Supp. 1111, 1113 (D. Mont. 1973) (admiralty jurisdiction not applicable to boaters, water skiers, or fishermen on dammed rivers). Some aviation accidents have a sufficient connection with shipping to fall

doctrine of interspousal immunity as an affirmative defense.[18]

The District Court for the Eastern District of Virginia issued a memorandum order granting the defendant's pretrial motion to dismiss the case on the merits.[19] The district court found that Virginia's interest in family harmony outweighed the federal interest in a uniform national rule of actions arising out of boat accidents involving married couples.[20] The trial court based the decision on three basic tests.[21] First, the Virginia interspousal immunity doctrine must not conflict with a federal statute.[22] Second, the state rule must not conflict with a judicially established federal admiralty rule.[23] Finally, Virginia's interest in in-

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within admiralty jurisdiction. *See, e.g.*, Higgenbotham v. Mobil Oil Corp., 357 F. Supp. 1164, 1167 (W.D. La. 1973) (helicopter performing crewboat functions crashed in Gulf of Mexico); Hark v. Antilles Airboat, Inc., 355 F. Supp. 683, 687 (D.V.I. 1973) (flights by seaplanes over international waters).

The current trend is toward per se admiralty jurisdiction for all pleasure craft accidents on navigable waters. *See, e.g.*, Kelly v. Smith, 485 F.2d 520, 525 (5th Cir. 1973) (considerations include functions and roles of parties, type of vehicles and instrumentalities, causation and type of injury, traditional concept of the role of admiralty law, occurrence of injury on navigable waters); Oppen v. Aetna Ins. Co., 485 F.2d 252, 257 (9th Cir. 1973) (damage to pleasure craft from oil spill sufficiently interferes with right to navigate to invoke admiralty jurisdiction); Luna v. Star of India, 356 F. Supp. 59, 66 (S.D. Cal. 1973) (vessel used as dockside museum sufficiently involved in maritime activity to invoke admiralty jurisdiction).

The Supreme Court has accepted without discussion admiralty jurisdiction for pleasure craft. *See, e.g.*, Levinson v. Deupree, 345 U.S. 648, 652 (1953) (admiralty jurisdiction applied to collision between two motorboats on the Ohio River); Coryell v. Phipps, 317 U.S. 406, 407, 412 (1943) (negligent agents of yacht owner held liable under admiralty jurisdiction); Just v. Chambers, 312 U.S. 383, 384-85 (1941) (owner of yacht entitled to cause of action in admiralty). The federal government has an interest in protecting navigation and commerce on navigable waters even if the pleasure craft is not engaged directly in commerce. St. Hilaire Moye v. Henderson, 496 F.2d 973, 979 (8th Cir.), *cert. denied*, 419 U.S. 884 (1974). Any accident on navigable waters potentially could endanger passing vessels involved in commerce. *Id.* Congress intended to include pleasure craft in admiralty jurisdiction. Motorboat Act of 1940, 46 U.S.C. § 526 (Supp. IV 1980). Federal safety and operational standards govern pleasure craft as well as shipping vessels. *Id.*

The word "vessel" encompasses every type of watercraft or other artificial contrivance capable of functioning as a means of transportation on water. 1 U.S.C. § 3 (1976). The term "vessel" included any description of watercraft navigating on any sea, channel, lake or river. 46 U.S.C. § 713 (1976). The Admiralty Jurisdiction Act of 1925 further expanded maritime jurisdiction to provide a cause of action when a vessel on navigable waters causes an injury sustained or consummated on land. 46 U.S.C. § 740 (1976). For example, a workman injured while repairing a vessel in drydock would have a cause of action in admiralty. *See* 46 U.S.C. § 740 (1976).

[18] 657 F.2d at 616.

[19] Byrd v. Byrd, Civ. No. 80-860-N (E.D. Va. January 6, 1981) (mem.).

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] Civ. No. 80-860-N; *see* Wilburn Boat Co. v. Fireman's Ins. Co., 348 U.S. 310, 314 (1955). Courts have fashioned rules for admiralty where Congress has not acted or delegated regulatory power to the states. *Id.* Judicially established admiralty rules should apply

terspousal immunity application cannot supersede any national need for a new federal rule abolishing interspousal immunity in maritime tort actions.[24]

The plaintiff in *Byrd* alleged that the Virginia interspousal immunity doctrine conflicted with two federal statutes.[25] The district court held that the purpose of section 221 of title thirty-three of the United States Code[26] is to insure compliance with other admiralty rules, not to provide a blanket prohibition against actions for negligence.[27] Virginia's common law doctrine therefore would not conflict with section 221.[28] The district court also ruled that Virginia interspousal immunity would not conflict with section 1461 of title forty-six of the United States Code.[29] The trial court stated that any discrepancy between section 1461 and the Virginia doctrine of immunity is too tenuous to bar interspousal immunity application.[30] The district court concluded that section 1461 addresses only

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uniformly throughout the United States. Guerrido v. Alcoa S.S. Co., 234 F.2d 349, 352 (1st Cir. 1956); *see also supra* note 2 (policy of national uniformity in maritime law). State law cannot override judicially fashioned admiralty rules just as state law may not override federal statutes. *See* Garrett Moore-McCormack Co., 317 U.S. 239, 249 (1942) (judicially established rights implement the Merchant Marine Act which takes precedence over conflicting state law).

[24] Civ. No. 80-860-N.

[25] *Id.*

[26] Federal Inland Navigation Rules, 33 U.S.C. § 221 (1976) *repealed by* 94 Stat. 3435 (1980).

[27] Civ. No. 80-860-N; *see* 33 U.S.C. § 221 (1976) *repealed by* 94 Stat. 3435 (1980). Section 221 provides that nothing in the Inland Rules can exonerate a vessel, shipowner or crew from negligent conduct. 33 U.S.C. § 221 (1976).

[28] Civ. No. 80-860-N.

[29] Federal Boat Safety Act of 1971, 46 U.S.C. § 1461 (1976); Byrd v. Byrd, Civ. No. 80-860-N; *see supra* note 12 (46 U.S.C. § 1461). Section 1461 provides that no person may negligently use a vessel in a way that endangers the life, limb, or property of any person. 46 U.S.C. § 1461 (1976).

[30] Civ. No. 80-860-N. Where the state is exercising its legitimate powers, the state statute controls the area covered by the state statute in the absence of a clear congressional intention to preempt state action. Steuart Transp. Co. v. Allied Towing Corp., 596 F.2d 609, 621 (4th Cir. 1979). A state statute based on police powers is not subordinate to federal law unless Congress acts to regulate or control the area. *See, e.g.*, Ray v. Atlantic Richfield Co., 435 U.S. 151, 157-58 (1978) (Federal Ports and Waterways Safety Act, 46 U.S.C. §§ 215, 364 (1976) preempts Washington tanker law regulating size and movement of oil tankers in Puget Sound); Askew v. American Waterways Operators, Inc., 411 U.S. 325, 332 (1973) (state statute imposing liability for oil removal costs applies since statute does not conflict with Federal Pollution Act, 33 U.S.C. § 1161 (1976) (*repealed* 1982)). A congressional purpose to preempt state regulation on a particular issue may arise in several ways. *See* Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947) (licensing requirements under the Public Utilities Act, 15 U.S.C. § 79 (1976 & Supp. V 1981)). The federal government may regulate the area completely to disallow supplemental state regulation. Pennsylvania R. Co. v. Public Service Comm'n, 250 U.S. 566, 569 (1919). Congress may act upon a field of dominant federal interest precluding enforcement of state law on the issue. Even if the national government has not foreclosed completely state legislation in an area, the federal law is controlling where state and federal statutes or regulations conflict. Fla. Lime & Avocado Growers, Ins. v. Paul, 372 U.S. 132, 142-43 (1963).

criminal and civil penalties and does not govern private causes of action.[31]

Before *Byrd*, no admiralty court had addressed the issue of interspousal immunity.[32] The district court, therefore, held that Virginia interspousal immunity could not conflict with a judicially established federal admiralty rule concerning interspousal immunity.[33] The district court also ruled that Virginia's interest in preventing a tort suit by a living person against his or her living spouse supersedes any national policy of uniformity in the law of international and interstate relations.[34] Consequently, the district court in *Byrd* dismissed the suit on the merits, applying interspousal immunity in admiralty tort.[35]

On appeal, the Fourth Circuit reversed the district court's holding that interspousal immunity bars tort suits between married parties within federal admiralty jurisdiction.[36] The Fourth Circuit used a two-pronged test to reach its decision. First, the *Byrd* court discussed whether a federal statute or judicially created federal admiralty rule governs interspousal immunity application.[37] Second, since no statute or rule controlled, the Fourth Circuit explored whether the court should develop a new federal admiralty rule.[38] The Fourth Circuit did not find any case or other authority addressing the application of interspousal immunity in maritime law.[39] The question, therefore, became a choice between following the existing Virginia interspousal immunity doctrine[40]

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[31] Civ. No. 80-860-N.

[32] *See* 657 F.2d at 616 (interspousal immunity in admiralty tort case of first impression).

[33] Civ. No. 80-860-N.

[34] *Id.* Interspousal immunity originally was designed to preserve marriage by preventing suits between spouses. Korman v. Carpenter, 216 Va. 86, 88, 216 S.E.2d 195, 197 (1975). When one spouse murders another, however, the preservation of marriage becomes irrelevant. *Id.* The state of Virginia, therefore, refused to apply interspousal immunity in wrongful death actions by the deceased spouse's estate against the living spouse. Counts v. Counts, 221 Va. 151, 152-56, 266 S.E.2d 895, 896-98 (1980).

[35] Civ. No. 80-860-N.

[36] Byrd v. Byrd, 657 F.2d 615, 621 (4th Cir. 1981).

[37] *Id.* at 617-21.

[38] *Id.*; *see* Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 314 (1955) (admiralty courts may fashion new rule if no statute or prior rule controls). An admiralty court should not fashion a new admiralty rule if the applicable state law does not impair the uniformity of admiralty principles or if some basic admiralty principle preempts the state law. Moore v. Hampton Roads Sanitation Dist. Comm'n, 557 F.2d 1030, 1034 (4th Cir. 1976).

[39] 657 F.2d at 617.

[40] *Id.* at 617. At the time of *Byrd*, Virginia applied interspousal immunity to all torts except automobile accidents and wrongful death actions when one spouse killed the other. *Id.* at 617 n.5; *see, e.g.*, Counts v. Counts, 221 Va. 151, 152-56, 266 S.E.2d 895, 896-98 (1980) (court used interspousal immunity to bar personal injury suit by husband against his divorced wife); Korman v. Carpenter, 216 Va. 86, 88, 216 S.E.2d 195, 198 (1975) (court refused to apply interspousal immunity where husband killed his wife and wife's estate brought suit); Surratt v. Thompson, 212 Va. 191, 194, 183 S.E.2d 200, 203 (1971) (interspousal immunity did not prevent cause of action resulting from automobile accident). Virginia has abolished the in-

or establishing a national rule governing interspousal immunity in maritime tort actions.[41] The *Byrd* court was careful in considering formulation of a new rule since any court exercising admiralty jurisdiction may establish a rule providing strong precedent for every other admiralty court in the interest of national uniformity.[42]

In *Byrd*, the Fourth Circuit recognized that a state law which interferes with the basic admiralty principles of uniformity and simplicity is not binding on parties in admiralty jurisdiction.[43] Admiralty courts look to state law in situations in which an overriding state interest exists.[44] State law also applies in admiralty when the state law does not contravene an established admiralty principle.[45] The Fourth Circuit refused to apply interspousal immunity in *Byrd* because the doctrine would defeat an established meritorious maritime claim.[46] The *Byrd* court concluded that states apply interspousal immunity in different ways.[47] If circuit courts exercising admiralty jurisdiction ruled according to the applicable state interspousal immunity doctrine, each case might have a different result.[48] The lack of precedent would impair the admiralty policy of uniformity.[49]

The Fourth Circuit expressed concern for future conflicts between

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terspousal immunity doctrine in tort effective July 1, 1981. VA. CODE ANN. § 8.01-220.1 (Cum. Supp. 1981). Since the Fourth Circuit disposed of *Byrd* on the basis of admiralty law, the court did not decide whether § 8.01-220.1 or the former Virginia interspousal immunity doctrine applied. 657 F.2d at 617 n.5.

[41] 657 F.2d at 617.

[42] *Id.* at 619. Where a judicially fashioned rule of admiralty law exists, the rule will prevail over conflicting state law. Bell v. Tug Shrike, 332 F.2d 330, 332 (4th Cir. 1964); *see supra* note 23 (judicially established admiralty rules applied uniformly).

[43] 657 F.2d at 617; *see* Moragne v. States Marine Lines, Inc., 398 U.S. 375, 402 (1970) (right to recover for wrongful death under maritime law negates state remedial statutes); Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 631 (1959) (admiralty jurisdiction does not accommodate licensee and invitee distinctions). Courts may apply state law to supplement or modify admiralty law if the proposed state principle does not interfere with admiralty uniformity. Just v. Chambers, 312 U.S. 383, 387-88 (1941); *see* Southern Pac. Co. v. Jensen, 244 U.S. 205, 216 (1917) (state provisions covering stevedore's liability arising from passengers' injuries interfere with maritime law).

[44] 657 F.2d at 619-20; *see* Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 319 (1955). In *Wilburn Boat*, the Supreme Court found that states have an overriding interest in regulating insurance. 348 U.S. at 319. The *Wilburn Boat* Court, therefore, ensured that state regulatory power over marine insurance would continue by making state law control instead of admiralty rules. *Id.*

[45] 657 F.2d at 617; *see supra* note 23 (judicially established admiralty rules); *supra* note 30 (federal legislation preempts state law).

[46] 657 F.2d at 618; *see* St. Hilaire Moye v. Henderson, 496 F.2d 973, 980-81 (8th Cir.) (Eighth Circuit refused to apply state boat guest statute because the law defeated maritime right to recovery and disrupted admiralty uniformity), *cert. denied*, 419 U.S. 884 (1974).

[47] 657 F.2d at 618; *see infra* notes 62-64 and accompanying text (differing state application of interspousal immunity).

[48] 657 F.2d at 618.

[49] *Id.*

state laws.[50] The *Byrd* court recognized that at one time all states uniformly applied interspousal immunity in tort.[51] An increasing number of states, however, are abrogating the doctrine of interspousal immunity.[52] Some states have abolished interspousal immunity while other states apply the doctrine only in certain types of cases.[53] At the time of *Byrd*, Virginia recognized two exceptions to the interspousal immunity doctrine.[54] The Virginia Supreme Court abolished interspousal immunity in automobile accident torts where the plaintiff spouse claimed intentional or gross negligence by the defendant spouse.[55] The Virginia

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[50] *Id.* at 620-21. In *Byrd*, the vessel on which plaintiff's injury occurred sailed in the Wachapreague Inlet, located between Virginia and Maryland. Brief for Appellant, *supra* note 14, at 4. If the court had applied a state law, the *Byrd* court would have faced a possible conflict between Virginia and Maryland common law or statutes. *See* Alva S.S. Co. v. City of N.Y., 405 F.2d 962, 971 (2d Cir. 1969) (court did not apply municipal immunity because of possible conflicts between New York and New Jersey law).

[51] 657 F.2d at 618; *see infra* notes 52, 62 & 63 and accompanying text (state treatment of interspousal immunity doctrine).

[52] 657 F.2d at 618. At the time of *Byrd*, several jurisdictions had established an exception to interspousal immunity in torts arising out of automobile accidents. *See, e.g.*, Lewis v. Lewis, 370 Mass. 619, _____, 351 N.E.2d 526, 532 (1976) (interspousal immunity no longer bars personal injury suit by wife against husband for injuries sustained in automobile accident); Rupert v. Stienne, 90 Nev. 397, 401, 528 P.2d 1013, 1017 (1974) (doctrine of interspousal immunity abandoned for automobile accident plan); Richard v. Richard, 131 Vt. 98, 100, 300 A.2d 637, 641 (1973) (interspousal immunity does not bar suit by spouse for personal injuries sustained while guest in spouse's automobile). Other courts abolished interspousal immunity for intentional spousal torts. *See, e.g.*, Windauer v. O'Conner, 107 Ariz. 267, 268, 485 P.2d 1157, 1158 (1971) (wife willfully and intentionally shot husband in head); Klein v. Klein, 58 Cal.2d 692, 693, 376 P.2d 70, 72, 26 Cal. Rptr. 102, 104 (1962) (action by wife against husband for broken leg); Self v. Self, 58 Cal.2d 683, 683-87, 376 P.2d 65, 65-69, 26 Cal. Rptr. 97, 97-101 (1962) (husband assaulted wife and broke her arm); Lusby v. Lusby, 283 Md. 334, 344, 390 A.2d 77, 89 (1978) (husband forced wife's automobile off road then assaulted and raped her); Flores v. Flores, 84 N.M. 601, 604, 506 P.2d 345, 348 (N.M. App. 1973) (husband intentionally wounded wife with knife); Smith v. Smith, 205 Or. 286, 288, 287 P.2d 572, 574 (1955) (spouse may sue for intentional tort); Apitz v. Dames, 205 Or. 242, 252, 287 P.2d 585, 598 (1955) (wife's estate sued husband for intentional injuries); Bounds v. Caudle, 560 S.W.2d 925, 926 (Tex. 1977) (wife's estate may sue for wrongful death when husband intentionally shoots wife).

[53] *See supra* note 52 (various state exceptions to interspousal immunity); *infra* notes 62 & 63 and accompanying text (states' positions on application of interspousal immunity).

[54] *See infra* notes 55 & 56 and accompanying text (exception to Virginia interspousal immunity existing at time of *Byrd*).

[55] Surratt v. Thompson, 212 Va. 191, 192, 183 S.E.2d 200, 202 (1971). In *Surratt*, a wife's estate brought a wrongful death action against her husband for her death resulting from an automobile accident between a car her husband was driving and a car a third person was driving. *Id.* at 201. The *Surratt* court found that interspousal immunity did not bar the wife's suit and a new jury should hear the evidence of the husband's per se negligence and gross negligence. *Id.* at 202-03. *See* Note, *The Legislative Abrogation of Interspousal Immunity in Virginia*, 15 U. RICH. L. REV. 939, 942-43 (1981) [hereinafter cited as *Abrogation in Virginia*] (Virginia's exception to interspousal immunity); *supra* note 40 (abrogation of Virginia's interspousal immunity).

Supreme Court also refused to apply interspousal immunity in wrongful death actions.[56]

To establish an easily ascertainable rule of maritime law, the *Byrd* court refused to apply the Virginia doctrine of interspousal immunity.[57] The Fourth Circuit had the rule making authority to establish an exception to interspousal immunity in admiralty jurisdiction.[58] The *Byrd* court abolished interspousal immunity in admiralty actions.[59]

The general trend among the states is toward abolishing interspousal immunity.[60] As a matter of public policy, interspousal immunity is an outmoded doctrine.[61] Some courts have rejected the notion that the husband and wife are the same legal person.[62] Other courts have found that interspousal immunity does not always promote marital harmony.[63]

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[56] Korman v. Carpenter, 216 Va. 86, 88, 216 S.E.2d 195, 198 (1975). In *Korman*, a wife's estate brought a wrongful death action against her husband for the fatal shooting of the wife by the husband. *Id.* at 195. The *Korman* court reasoned that when one spouse wrongfully terminates the marriage by killing the other, interspousal immunity should not bar the suit since preservation of domestic harmony is no longer necessary. *Id.* at 198. *See supra Abrogation in Virginia*, note 55, at 943-44 (abrogation of Virginia's interspousal immunity in wrongful death actions); *supra* note 40 (current state of Virginia's interspousal immunity).

[57] 657 F.2d at 620.

[58] *Id.* at 619; *see supra* note 23 (uniform application of judicially established admiralty rules).

[59] 657 F.2d at 619-21.

[60] 657 F.2d at 618; *see Abrogation in Virginia*, *supra* note 55, at 939; *supra* text accompanying notes 55 & 56 (abrogation of interspousal immunity in Virginia); *infra* notes 60-64 and accompanying text (state trends in interspousal immunity).

[61] 657 F.2d at 621; *see* Surratt v. Thompson, 212 Va. 191, 194, 183 S.E.2d 200, 202 (1971) (theory of man and woman as "one flesh" should not bar suits today); Immer v. Risko, 56 N.J. 482, 488, 267 A.2d 481, 484 (1970) (single legal identity of husband and wife is outmoded concept).

[62] *See generally* Johnson v. Johnson, 201 Ala. 41, 43-44, 77 So. 335, 337-38 (1917); Rains v. Rains, 97 Colo. 19, 21-23, 46 P.2d 740, 742-44 (1935); Lewis v. Lewis, 370 Mass. 619, _____, 351 N.E.2d 526, 529-30 (1976); Merenoff v. Merenoff, 76 N.J. 535, 544-45, 388 A.2d 951, 960-61 (1978); Crowell v. Crowell, 180 N.C. 516, 517, 105 S.E. 206, 207 (1920); Courtney v. Courtney, 184 Okla. 395, 400-405, 87 P.2d 660, 665-70 (1938); Bounds v. Caudle, 560 S.W.2d 925, 926-28 (Tex. 1977); Richard v. Richard, 131 Vt. 98, 101, 300 A.2d 637, 641 (1973); Surratt v. Thompson, 212 Va. 191, 192-93, 183 S.E.2d 200, 201-02 (1971); Freehe v. Freehe, 81 Wash.2d 183, 184-85, 500 P.2d 771, 773-75 (1972); Coffindaffer v. Coffindaffer, 244 S.E.2d 338, 343-44 (W. Va. 1978); Wait v. Pierce, 191 Wis. 202, 205-206, 209 N.W. 475, 478-79 (1926).

[63] Johnson v. Johnson, 201 Ala. 41, 43-44, 77 So. 335, 337-38 (1917); Cramer v. Cramer, 379 P.2d 95, 97 (Alaska 1963); Self v. Self, 58 Cal. 2d 683, 685-86, 376 P.2d 65, 65-67, 26 Cal. Rptr. 97, 99-100 (1962); Brown v. Brown, 88 Conn. 42, 43-44, 89 A. 889, 890-91 (1914); Lorang v. Hays, 69 Idaho 400, 444-45, 209 P.2d 733, 736-37 (1949); Brooks v. Robinson, 259 Ind. 16, 19-20, 284 N.E.2d 794, 797-98 (1972); Brown v. Gosser, 262 S.W.2d 480, 484-85 (Ky. 1953); Moulton v. Moulton, 309 A.2d 224, 228-29 (Me. 1973); Lusby v. Lusby, 283 Md. 334, 335-36, 390 A.2d 77, 78-79 (1978); Lewis v. Lewis, 370 Mass. 619, _____, 351 N.E.2d 526, 529-30 (1976); Hamilton v. Fulkerson, 285 S.W.2d 642, 644 (Mo. 1955); Rupert v. Stienne, 90 Nev. 397, 398-99, 528 P.2d 1013, 1015-16 (1974); Merenoff v. Merenoff, 76 N.J. 535, 544-45, 388 A.2d 951, 960-61 (1978); Flores v. Flores, 84 N.M. 601, 603, 506 P.2d 345, 347 (N.M. App. 1973); Courtney v. Courtney, 184 Okla. 395, 400-405, 87 P.2d 660, 665-70 (1938); Apitz v. Dames, 205

Courts no longer consider imposition of interspousal immunity necessary to prevent fraud and collusion against insurance companies.[64] The Fourth Circuit recognized that insurance companies are usually the real parties in interest where one spouse sues the other.[65] Abolition of interspousal immunity in admiralty torts supports the general principle that a tortious injury deserves a remedy.[66]

Or. 242, 254-55, 287 P.2d 585, 598-99 (1955); Digby v. Digby, 388 A.2d 1, 3 (R.I. 1978); Scotvold v. Scotvold, 68 S.D. 53, 55-56, 298 N.W. 266, 268-69 (1941); Bounds v. Caudle, 560 S.W.2d 925, 926-28 (Tex. 1977); Richard v. Richard, 131 Vt. 98, 101, 300 A.2d 637, 641 (1973); Korman v. Carpenter, 216 Va. 86, 87-88, 216 S.E.2d 195, 197-98 (1975); Surratt v. Thompson, 212 Va. 191, 192-93, 183 S.E.2d 200, 201-202 (1971); Freehe v. Freehe, 81 Wash. 2d 183, 184-85, 500 P.2d 771, 773-75 (1972); Coffindaffer v. Coffindaffer, 244 S.E.2d 338, 343-44 (W. Va. 1978); Wait v. Pierce, 191 Wis. 202, 205-06, 209 N.W. 475, 478-79 (1926).

[64] *See* Korman v. Carpenter, 216 Va. 86, 87, 216 S.E.2d 195, 196 (1975) (every driver should carry liability insurance). Every responsible driver carries liability insurance and expects the insurance company to pay in the event of the driver's negligence. Smith v. Kauffman, 212 Va. 181, 185-86, 183 S.E.2d 190, 194 (1971). If the insurance company pays for injuries to one spouse that the other spouse causes no disruption in family harmony results. *Id.* Courts threaten marital relations and the policy underlying interspousal immunity by refusing to allow an interspousal cause of action. Immer v. Risko, 56 N.J. 482, 489-90, 267 A.2d 481, 484-85 (1970). If the insurance company does not pay, an unexpected drain on the family resources results. *Id.* Insurance companies search carefully for false and collusive claims. Coffindaffer v. Coffindaffer, 244 S.E.2d 338, 343 (W. Va. 1978). Insurance companies are not defenseless and do not require excessive protection by the courts. *Id.*

[65] Byrd v. Byrd, 657 F.2d 615, 621 (4th Cir. 1981).

[66] Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 630 (1959). Under the equal protection clause of the fourteenth amendment, a passenger in any vessel or vehicle who is a spouse is entitled to the same protection under the law as any other passenger. U.S. CONST. amend. XIV; *see* Alexander v. Alexander, 140 F. Supp. 925, 929 (W.D.S.C. 1956) (interspousal immunity should not bar recovery to a husband or wife who is a passenger). Application of interspousal immunity is a selective application of tort liability that prevents spouses with legitimate claims from recovering. St. Hilaire Moye v. Henderson, 496 F.2d 973, 980-81 (8th Cir.), *cert. denied*, 419 U.S. 884 (1974). Interspousal immunity interferes with the national admiralty policy of recovery. *See supra* note 3 (uniform remedies in admiralty).

Federal statutes and Coast Guard regulations govern the safety of vessels in navigable waters. Richards v. Blake Builders Supply Inc., 528 F.2d 745, 747 (4th Cir. 1975). The owner of a vessel owes a duty of reasonable care to all persons on board the vessel for legitimate reasons. Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 632 (1959). State law should not defeat or narrow admiralty principles. *Id.*; *see, e.g.*, Garrett v. Moore-McCormack Co., 317 U.S. 239, 243-46 (1942) (seaman in Pennsylvania court under Merchant Marine Act, 28 U.S.C. § 371 (1976) is free from state burden of proof standards); Bagrowski v. American Export Isbrandtsen Lines, Inc., 440 F.2d 502, 506 (7th Cir. 1971) (federal maritime law superseded Wisconsin Workmen's Compensation Act, WIS. STAT. § 102.03(2) (1975) when shipowner asserted right to indemnification); Alva S.S. Co. v. City of N.Y., 405 F.2d 962, 970 (2d Cir. 1969) (shipowner not barred from implicating a uniform rule of admiralty to defeat municipal immunity under state law); Kalmback, Inc. v. Insurance Co. of State of Pa. Inc., 422 F. Supp. 44, 45 (D. Alaska 1976) (shipowners could not obtain attorney's fees under Alaska state law in action under admiralty jurisdiction). The federal government has left some regulatory power over admiralty matters to the states. *See, e.g.*, Askew v. American Waterways Operators, Inc., 411 U.S. 325, 343 (1973) (state law governing pollution standards not in conflict with federal law); Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348

Admiralty principles provide broad recovery for torts occurring on many types of vessels.[67] The *Byrd* decision reaffirmed the policy of categorizing pleasure craft accidents as admiralty issues.[68] The policy fosters uniformity by allowing injured passengers on vessels in all navigable waters to maintain a cause of action against the boat's owner or operator.[69] Uniformity of decision is necessary since an increasing number of people vacation in the navigable waters of states other than their own.[70] Admiralty jurisdiction removes all vessels from the governance of local or state concepts such as interspousal immunity.[71] Maritime law covers both substance and procedure in admiralty torts.[72] Only overriding state concerns should take precedence over the policy of uniformity in admiralty law.[73]

The admiralty policy of uniformity has defeated state concerns in other instances. The Second Circuit, for example, has barred application of municipal immunity in an admiralty suit arising out of a city's negligent actions.[74] In many areas, such as the New York Harbor, municipalities are close geographically.[75] Ordinances of different cities might espouse different rules of recovery.[76] The laws of the fifty states

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U.S. 310, 314 (1955) (broad state power to regulate insurance companies and insurance contracts).

[67] *See supra* note 17 (admiralty jurisdiction includes many types of vessels on navigable waters).

[68] 657 F.2d at 616-17; *see supra* note 17 (pleasure crafts fall within admiralty jurisdiction).

[69] *See supra* note 2 (injured parties should recover in admiralty jurisdiction).

[70] *See supra* Brief for Appellant, note 14, at 16-17 (uniformity in interspousal immunity application prevents choice of law problems that impede a maritime right to recovery).

[71] *See* Armour v. Gradler, 448 F. Supp. 741, 744 (W.D. Pa. 1978) (admiralty jurisdiction prevents application of New York substantive law).

[72] *See* Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 409 (1953) (Constitution gives both substantive and procedural discretion to admiralty courts); Chelentis v. Luckenbach S.S. Co., 247 U.S. 372, 381-82 (1918) (admiralty is a discrete system of law operating uniformly throughout United States); Southern Pacific Co. v. Jensen, 244 U.S. 205, 210 (1917) (maritime law operates under procedural due process and equal protection principles); St. Hilaire Moye v. Henderson, 496 F.2d 973, 980 (8th Cir.) (federal admiralty jurisdiction is not same as diversity jurisdiction, therefore admiralty applies own substantive law and procedures); *cert. denied*, 419 U.S. 884 (1974); Branch v. Schumann, 445 F.2d 175, 178 (5th Cir. 1971) (in exercising admiralty jurisdiction, courts must apply all substantive rules and procedures of maritime law).

[73] *See supra* notes 3 & 5 (courts should consider state concerns when there is no conflict with admiralty laws).

[74] Alva S.S. Co. v. City of N.Y., 405 F.2d 962, 970 (2d Cir. 1969). In *Alva*, a city fire commissioner negligently issued an order which caused an explosion on a ship on the New York Harbor. *Id.* at 964. The Second Circuit in *Alva*, held that municipal immunity did not bar the ship's suit against New York. *Id.* at 970. The *Alva* court based its decision on the need for national uniformity in admiralty law. *Id.* at 971.

[75] *Id.* at 971.

[76] *Id.*

create varying exceptions to municipal liability.[77] Application of conflicting exceptions would impair national uniformity in maritime law.[78] The Supreme Court has refused to uphold state-created maritime liens on ships[79] on the ground that state liens inhibit interstate commerce.[80] In general, the Supreme Court tends to foster expanded liability and discourage immunity from prosecution when statutes or rules imply a substantial right to recovery.[81]

Before *Byrd*, statutes, rules, and court decisions had never addressed the application of interspousal immunity in admiralty torts.[82] Courts should be reluctant to change admiralty law or common law in the face of possible changes which conflict with each other.[83] Uniformity for the sake of uniformity serves no purpose if the new rule is harsh and incompatible with existing policy and practice.[84] Courts should fashion a new rule for the purpose of uniformity only if uniformity would serve a valid purpose.[85]

Arguably, interspousal immunity is a subject more appropriate for resolution in the state or federal legislatures than for determination by the courts.[86] Legislatures are abrogating the doctrine of interspousal immunity for many reasons.[87] Courts and legislatures have recognized that interspousal immunity no longer is necessary or even useful to preserve the family unit.[88] A husband and wife with sufficient motivation to bring suit against a spouse probably is not interested in preserving harmonious relations. Spouses colluding to collect insurance will suffer from financial strain on the family resources if interspousal immunity bars the

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[77] *Id.*

[78] *Id.*

[79] The Roanoke, 189 U.S. 185, 194-97 (1902).

[80] *Id.*

[81] *See* Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 410 (1953) (plaintiff had cause of action in maritime law rather than Pennsylvania law that would apply contributory negligence as a bar to recovery); Garrett v. Moore-McCormack Co., 317 U.S. 239, 243-46 (1942) (seaman had more liberal burden of proof under admiralty law rather than stricter Pennsylvania standard). Old rules should yield to new standards reflecting changed circumstances. Worrell v. Worrell, 174 Va. 11, 20, 4 S.E.2d 343, 346-47 (1939). Common law is adaptable to the requirements of society. Courts must scrutinize applications of questionable common law doctrine such as interspousal immunity to see if changing times require new standards. Korman v. Carpenter, 216 Va. 86, 87-88, 216 S.E.2d 195, 197 (1975).

[82] Byrd v. Byrd, Civ. No. 80-860-N (E.D. Va. January 6, 1981) (mem.).

[83] Bell v. Tug Shrike, 332 F.2d 330, 332 (4th Cir. 1964).

[84] *Id.*

[85] *See supra* note 3 (uniformity in admiralty law).

[86] Byrd v. Byrd, 657 F.2d 615, 619 (4th Cir. 1981).

[87] *See infra* text accompanying notes 88 & 89 (policy reasons for the abrogation of interspousal immunity).

[88] *See supra* note 6 (interspousal immunity doctrine); *supra* note 64 (interspousal immunity can damage marital harmony).

suit.[89] Financial difficulties disrupt harmonious conjugal relations, defeating the doctrine of interspousal immunity's stated goal of preserving marital harmony.

The purported state interest in governing marital relations is subordinate to the national interest in admiralty law uniformity.[90] Congress has not disclaimed specifically any preemption of state interspousal immunity statutes.[91] The Fourth Circuit, therefore, was justified in exercising rulemaking power to eliminate maritime interspousal immunity in the interest of national unity.[92]

The *Byrd* decision will have several ramifications within the Fourth Circuit and the United States. A court sitting in admiralty probably will not apply interspousal immunity in tort.[93] The Fourth Circuit tacitly encouraged the abolishment of interspousal immunity.[94] The *Byrd* court followed the trend toward less stringent state controls over domestic relations.[95] The *Byrd* decision may encourage Congress to institute a more comprehensive body of maritime law. Finally, the Fourth Circuit has encouraged suits between husband and wife for injuries sustained in pleasure craft accidents.[96]

The Fourth Circuit's decision in *Byrd* was a result of the trend among the states toward abolishing interspousal immunity.[97] As interstate and international travel become more common, the interest in national uniformity in admiralty law supersedes state interest in controlling interspousal immunity.[98] The *Byrd* decision furthers freedom to sue among spouses.

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[89] *See supra* note 64 (interspousal immunity and insurance fraud).

[90] *See supra* note 3 (uniformity in admiralty law); *supra* note 5 (state interest in governing domestic relations).

[91] Byrd v. Byrd, 657 F.2d 615, 616 (4th Cir. 1981); *see supra* note 30 (Congressional preemption of state regulatory power).

[92] *See supra* note 3 (uniformity in admiralty law); *supra* note 23 (judicially established admiralty rules).

[93] *See* Byrd v. Byrd, 657 F.2d 615, 621 (4th Cir. 1981). The Fourth Circuit in *Byrd* held that interspousal immunity does not apply within admiralty jurisdiction. *Id.*

[94] *See* 657 F.2d at 618 (trend toward interspousal immunity abolishment); *supra* text accompanying notes 51-53, 60-66 (abrogation of interspousal immunity).

[95] *See* 657 F.2d at 618 (Virginia has abolished interspousal immunity); *see also supra* note 40 (history of Virginia interspousal immunity abrogation).

[96] *See* 657 F.2d at 621 (*Byrd* court abolished interspousal immunity in admiralty tort); *supra* note 17 (pleasure craft included in admiralty jurisdiction).

[97] *See supra* note 40 (Virginia no longer applies interspousal immunity). *See generally supra* text accompanying notes 51-66.

[98] *See generally supra* notes 3 and 5 (uniformity in maritime law and state interest in interspousal immunity).

B. *Divided Damages Includes Settlements Made To Servicemen*

Under admiralty law, the divided damages rule in mutual fault collisions requires allocation of damages between the responsible vessels.[1] Admiralty doctrine traditionally has provided that mutual wrongdoers pay personal injury and property damages inflicted on innocent third parties.[2] In *Ionian Glow Marine, Inc. v. United States*,[3] the Fourth Cir-

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[1] *See* The Schooner Catharine v. Dickinson, 58 U.S. (17 How.) 170 (1854). In *The Schooner Catharine*, the Supreme Court expressly approved the doctrine of equal division of damages in mutual fault collisions. *Id.* at 178. The rule of divided damages in maritime collisions dates back to ancient history. *See* Staring, *Contribution and Division of Damages in Admiralty and Maritime Cases*, 45 CALIF. L. REV. 304, 306 (1957) (discussion of evolution of divided damages). The divided damages rule existed long before the rule appeared in the early maritime codes. *Id. See generally* Owen, *The Origins and Development of Marine Collision Law*, 51 TUL. L. REV. 759 (1977).

In American jurisprudence, the rules of admiralty generally follow English precedent regarding fault. *See* G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY § 704, at 492 (2d ed. 1975). When neither vessel is at fault in a collision, each must pay its own loss with no liability attaching to either. *See* The Clara, 102 U.S. 200, 203 (1880); The Lepanto, 21 F. 651, 655 (S.D.N.Y. 1884). When fault in a collision is attributable to only one of the vessels, that vessel must bear its own loss and pay a share of the damages of the other vessel as well. *See* The Clara, 102 U.S. at 203; Oaksmith v. Garner, 205 F.2d 262, 266 (9th Cir. 1953). When the fault of both vessels causes the collision, the settlement results in a division of damages which under old law was an equal division. *See* The Chattahoochee, 173 U.S. 540, 549 (1899); The Schooner Catharine v. Dickinson, 58 U.S. (17 How.) 170, 178 (1854).

The Supreme Court replaced the traditional divided damges rule with a proportionate fault doctrine based on a sliding scale of percentages, although the rule still retains the name of divided damages. United States v. Reliable Transfer Co., 421 U.S. 397, 411 (1975). The proportionate fault doctrine attempts to determine more precise degrees of fault in collision cases since the old divided damages doctrine often resulted in an unjust allocation of damage. *Id.* at 410-11.

After the Brussels Collision Liability Convention of 1910, the proportionate fault doctrine emerged as the primary international rule in calculating damages in collisions. *See* Comment, *The Difficult Quest for a Uniform Maritime Law: Failure of the Brussels Conventions to Achieve International Agreement on Collision Liability, Liens, and Mortgages*, 64 YALE L.J. 878, 880 (1955). The proportionate fault rule gained acceptance everywhere except the United States. *Id.* The United States finally assented to the more equitable method of apportioning damages in *Reliable Transfer*. *See* 421 U.S. at 411. *See generally* Healy & Koster, Reliable Transfer Co. v. United States: *Proportionate Fault Rule*, 7 J. MAR. L. & COM. 293 (1975).

[2] *See* Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp., 342 U.S. 282, 284 (1952). In *Halcyon Lines*, the Supreme Court held that in mutual fault collisions at sea, the mutual wrongdoers must compensate third parties not at fault. *Id.* The historic rule of divided damages still applies as a comparative fault doctrine in collision cases. *See* United States v. Reliable Transfer Co., 421 U.S. 397, 411 (1975); Nutt v. Loomis Hydraulic Testing co., 552 F.2d 1126, 1132 (5th Cir. 1977); *see also* The Atlas, 93 U.S. 302, 319 (1878). In *The Atlas*, the Supreme Court ruled that in a case of collision the accurate and equitable measure of compensation to an innocent third party, a party not at fault in the collision, is damages to the full amount of the third party's actual loss. *Id.*

[3] 670 F.2d 462 (4th Cir. 1982).

cuit considered whether a divided damages apportionment includes payments made to Navy personnel injured in a collision.[4] The Fourth Circuit held that the owner of one of the responsible vessels in a mutual fault collision may include payments made to injured Navy personnel as part of the divided damages.[5]

The *Ionian Glow* case arose from a collision in fog in United States territorial waters between a Greek cargo ship, the *M/V Star Light*, and a United States Navy vessel, the *Francis Marion*.[6] Both ships sustained substantial damage,[7] and three crewmen aboard the *Francis Marion* suffered injuries in the collision.[8] Ionian Glow Marine, Inc., owner of the *M/V Star Light*, instituted an action pursuant to the Public Vessels Act[9] seeking exoneration from or limitation of liability.[10] Both parties, however, agreed on their respective degrees of fault in the collision,[11] leaving the issue of damages to the judgment of the district court.[12] In addition, Ionian Glow settled the personal injury claims brought by the three crewmembers of the *Francis Marion*.[13] As part of its alleged damages against the United States, Ionian Glow tried to include the settlement of the claims brought by the three injured servicemen.[14] The district court, however, denied the inclusion of the servicemen's settlement in Ionian Glow's share of the damages.[15]

The district court agreed with the Government's contention that the United States Supreme Court's decisions in *Feres v. United States*[16] and

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[4] *Id.* at 463.

[5] *Id.* at 464.

[6] *Id.* at 463.

[7] *Id.*

[8] *Id.* Two Navy officers and one enlisted man on board the *Francis Marion* suffered injuries. *Id.* The record fails to disclose the extent of the injuries. *Id.*

[9] 46 U.S.C. §§ 781-90 (1976). The Public Vessels Act provides that the United States bears the same tort liability as imposed by admiralty on a private shipowner. *Id.* § 781; *see* Canadian Aviator, Ltd. v. United States, 324 U.S. 215, 228 (1944) (Supreme Court applied Public Vessels Act in finding United States liable as shipowner).

[10] 670 F.2d at 463.

[11] *Id.* In settling the respective percentages of fault out of court, the parties implemented the divided damages rule through a mutual agreement of liability. *Id.* Ionian Glow agreed to pay 65% of the government's damages and the government agreed to pay 35% of Ionian Glow's damages. *Id.*

[12] *Id.*

[13] *Id.* Ionian Glow settled the suit with the servicemen for $700,000. *Id.* The Veteran's Benefits Act ordinarily provides a compensation scheme for servicemen injured while performing their regular duties. 38 U.S.C. § 331 (1976); *see* Complaint of Ionian Glow Marine, Inc., 510 F. Supp. 196, 197 (E.D. Va. 1981). The district court refused to permit the inclusion of the servicemen's settlement in the division of damages. 670 F.2d at 463; *see also infra* text accompanying notes 25-28 (discussion of district court's holding).

[14] 510 F. Supp. at 197; *see infra* text accompanying notes 25-28 (discussion of district court's holding).

[15] 670 F.2d at 463; *see infra* text accompanying notes 25-28 (discussion of district court's holding).

[16] 340 U.S. 135 (1950).

Stencel Aero Engineering Corp. v. United States[17] should control the case.[18] In *Feres*, the Court held that the government bears no liability under the Federal Tort Claims Act[19] for injuries to servicemen when the injuries result from an activity incident to service.[20] In *Stencel Aero*, the Supreme Court extended the rule in *Feres* to include third parties.[21] The Court held that an injured third party cannot recover in an indemnity action against the United States when the third party is a serviceman.[22] The *Stencel Aero* Court reasoned that a third-party indemnity claim would circumvent the military compensation scheme under the Veteran's Benefits Act by subjecting the government to the broad liability the Act sought to limit.[23] The compensation scheme provides a swift, efficient remedy for injured servicemen as well as an upper limit of liability for the government in service-related injuries.[24]

The district court applied the rationale of *Feres* and *Stencel Aero* to

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[17] 431 U.S. 666 (1977).

[18] 607 F.2d at 463.

[19] *See* 28 U.S.C. §§ 1346, 2671-80 (1976) (applicable provisions of Federal Tort Claims Act).

[20] 340 U.S. at 141-45. A primary purpose of the Federal Tort Claims Act was to transfer from Congress to the courts the burden of examining tort claims against the government. *Id.* at 139. Congress established a comprehensive system of relief authorized by statute for military and naval personnel. *Id.* at 140; *see* 38 U.S.C. §§ 321, 331 (1976) (provisions of the Veteran's Benefits Act).

[21] 431 U.S. at 673. In *Stencel Aero*, the Supreme Court reasoned that permitting soldiers on active duty to bring suits against the United States would deteriorate military discipline. *Id.* The Court stated that actions requiring members of the armed services to testify on each other's decisions encourages the second-guessing of military orders. *Id.*

[22] 431 U.S. at 672. The *Stencel Aero* Court considered three primary factors in preventing the inclusion in Stencel Aero's damages of the payments made to the injured servicemen. First, a distinctly federal relationship exists between the government and members of the armed forces. *Id.*; *see* United States v. Standard Oil Co., 332 U.S. 301, 305-06 (scope, nature, legal incidents, and consequences of relations between persons in service and government derive from federal sources and adhere to federal authority). Second, the Veteran's Benefits Act establishes, as a substitute for tort liability, a statutory no-fault compensation scheme which provides pensions to injured servicemen without regard to any negligence attributable to the government. 431 U.S. at 673; *see* 38 U.S.C. § 331 (1976). Third, the institution of suits under the Federal Tort Claims Act might detract from the military discipline inherent in the special relationship between a soldier and his superiors. 431 U.S. at 673; *see* 28 U.S.C. § 2671 (1976).

[23] 431 U.S. at 673-74. In *Ionian Glow*, the Fourth Circuit recognized the basic difference between common-law tort suits and admiralty. 670 F.2d at 463. In an indemnity suit, the burden of payment for the entire loss shifts from one tortfeasor compelled to pay damages to the shoulders of another, more blameworthy tortfeasor. *See* W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 51 (4th ed. 1971). In contribution suits, tortfeasors distribute the loss by requiring each to pay his proportionate share. *Id. See generally* Leflar, *Contribution and Indemnity Between Tortfeasors*, 81 U. PA. L. REV. 130 (1932). In admiralty suits, the established principles of maritime law prevail over the common law. 670 F.2d at 463; *see infra* notes 49-52 (discussion of distinction between common law and admiralty).

[24] 431 U.S. at 673. The Veteran's Benefits Act provides a quick, efficient remedy by allowing servicemen to process administrative claims without going through the expense

prevent Ionian Glow from including any payments to the injured servicemen in the damages.[25] The district court reasoned that the servicemen's exclusive remedy against the government was a compensation claim under the Veteran's Benefits Act.[26] The Act provides for a ceiling on the liability the government might incur for service-related injuries.[27] The district court found that the inclusion of payments made to the servicemen would circumvent the government's limitation of liability and frustrate a central purpose of the Act by allowing recovery beyond that ceiling.[28]

On appeal, the Fourth Circuit summarily rejected the application of *Feres* and *Stencel Aero* to the *Ionian Glow* case.[29] *Feres* and *Stencel Aero* involved actions under the Federal Tort Claims Act (FTCA),[30] but *Ionian Glow* involved the Public Vessels Act, a statute confining collision litigation to the applicable maritime law.[31] The Fourth Circuit recognized that the exceptions and limitations applicable under the FTCA bear no weight in admiralty claims.[32] In addition, the Fourth Circuit recognized

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and time of protracted litigation. *Id.*; *see* 38 U.S.C. §§ 301-62 (1976). The Act also limits the government's exposure to liability. 431 U.S. at 673; *see* 38 U.S.C. § 314 (1976) (clearly defined rate schedule of compensation showing extent of government's liability).

[25] 670 F.2d at 463.

[26] *Id.*; *see* 38 U.S.C. § 331 (1976) (provides disability benefits to servicemen for injuries suffered or disease contracted in line of duty).

[27] *See* 38 U.S.C. § 314 (1976); 431 U.S. at 673 (discussion of Supreme Court's reasoning regarding limitation of liability as specified under the Veteran's Benefits Act). The Veteran's Benefits Act provides for specific payment guidelines which the government must follow, thus assuring a ceiling on liability. *See* 38 U.S.C. § 322 (1976).

[28] 510 F. Supp. at 200; *see supra* note 27 (description of one particular purpose of Veteran's Benefits Act).

[29] 670 F.2d at 463.

[30] *Id.*; *see* 28 U.S.C. § 2674 (1976). The Federal Tort Claims Act (FTCA) precludes recovery for servicemen injured in activity incident to service. *See* United States v. Brown, 348 U.S. 110, 112 (1954) (actionable cause for servicemen exists when injury not incident to service). *Compare* Brooks v. United States, 337 U.S. 49, 51 (1949) (recovery permitted under Federal Tort Claims Act for injury not incident to service) *with* Feres v. United States, 340 U.S. 135, 146 (1950) (recovery denied under Federal Tort Claims Act for injury incident to service). When injuries sustained by servicemen occur incident to service, federal compensation laws provide the exclusive remedy. *See* 340 U.S. at 146. In *Feres*, the Supreme Court recognized an essential difference in whether an injury occurs incident to a serviceman's duty. *Id.* In construing the FTCA, the *Feres* Court reasoned that Congress did not intend soldiers on active duty, injured incident to service, to sue under the FTCA. *Id.* at 142-43. Because of the transient nature of servicemen's duties, Congress provided relief for injuries incident to service under quick, efficient compensation statutes. *Id.* at 143; *see also* O'Neil v. United States, 202 F.2d 366, 367 (D.C. Cir. 1953) (veteran receiving disability compensation could not recover under FTCA); Pettis v. United States, 108 F. Supp. 500, 501 (N.D. Cal. 1952) (FTCA creates no additional causes of action for those already covered by adequate compensation).

[31] 670 F.2d at 463; *see supra* notes 22 & 27 (explanation of Veteran's Benefits Act).

[32] 670 F.2d at 463. A major exception under the FTCA involves the *Feres* and *Stencel Aero* decisions. *See* 340 U.S. at 138, 146. The *Feres* Court found that the FTCA provides no

that the Public Vessels Act applies exclusively to damages caused by a public vessel of the United States.[33] Since the *Ionian Glow* case involved a mutual fault collision under the Public Vessels Act rather than an indemnity or contribution suit under another statute, the Fourth Circuit did not apply *Feres* and *Stencel Aero*.[34]

The Fourth Circuit relied on the Supreme Court's decision in *The Chattahoochee*[35] in concluding that Ionian Glow's damages could include the servicemen's settlement.[36] *The Chattahoochee* involved a mutual fault collision between a schooner and a steamship in which the schooner sank while carrying valuable cargo.[37] A statute, the Harter Act,[38] precluded the cargo owner from recovering against the carrying vessel.[39] The cargo owner, however, recovered a judgment for damages against the noncarrying vessel owner, the other party to the collision.[40] The Supreme Court permitted the noncarrying vessel owner to include this settlement in the divided damages apportionment between the carrying vessel owner and the noncarrying vessel owner.[41] Despite the provisions of the Harter Act limiting liability, the Supreme Court followed the admiralty rule of divided damages and held the carrying vessel indirectly liable.[42]

The Fourth Circuit also examined the Supreme Court's decision in

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remedy for claims of servicemen injured incident to service. *Id.* at 146. The Fourth Circuit agreed that servicemen cannot bring actions against the government under the FTCA for injuries sustained incident to service. 670 F.2d at 463. The *Ionian Glow* court, however, recognized that the present claim involved the PVA and the appropriate admiralty law, not the FTCA and its exception. *Id.*; *see* Lane v. United States, 529 F.2d 175, 179 (4th Cir. 1975); DeBardeleben Marine Corp. v. United States, 451 F.2d 140, 146 (5th Cir. 1971).

[33] *See* 670 F.2d at 463; 46 U.S.C. § 781 (1976). In drafting the PVA, Congress intended to impose on the United States the same liability as imposed by admiralty on a private shipowner. *See* Allen v. United States, 338 F.2d 160, 162 (9th Cir. 1964), *cert. denied*, 380 U.S. 961 (1965); Ira S. Bushey & Sons, Inc. v. United States, 276 F. Supp. 518, 523 (E.D.N.Y. 1967), *aff'd*, 398 F.2d 167 (2d Cir. 1968).

[34] 670 F.2d at 463.

[35] 173 U.S. 540 (1899).

[36] 670 F.2d at 463-64.

[37] 173 U.S. at 541-42. In *The Chattahoochee*, the collision between the schooner and the steamship resulted in a total loss of the schooner, including all property and cargo aboard. *Id.* at 542. In the collision, the steamship escaped undamaged. *Id.*

[38] 46 U.S.C. §§ 190-95 (1976). The Harter Act provides that cargo owners cannot collect directly from the carrying vessels for damages arising from collisions based on faults in navigation. *Id.* § 192.

[39] 173 U.S. at 552.

[40] 173 U.S. at 552-55.

[41] *Id.* at 552-53; *cf.* The Delaware, 161 U.S. 459, 472 (1896) (Harter Act, which had no application to collision between two vessels, modified relations previously existing between vessel and its cargo); The Manitoba, 122 U.S. 97, 111 (1887) (all damages incurred by both vessels added together and equally divided).

[42] 173 U.S. at 554-55. The rule of mutual liability between parties states that in mutual fault collisions, the shipowners proportionally divide the entire damage to both ships. *Id.*

Weyerhaeuser Steamship Co. v. United States[43] which extended the rule in *The Chattahoochee*.[44] In *Weyerhaeuser*, the Court examined a mutual fault collision between a private vessel and an army dredge in which a government employee sustained an injury.[45] After the private vessel owner settled a claim brought by the government employee, the Court permitted the calculation of the settlement into the divided damages apportionment.[46]

The Fourth Circuit relied on the Supreme Court's rationale in *The Chattahoochee* and *Weyerhaeuser* in concluding that the settled admiralty doctrine of divided damages must prevail over a statutory provision limiting liability.[47] In *Ionian Glow*, the Fourth Circuit recognized the distinction between common law and admiralty in applying the uniform maritime principle of divided damages.[48] A distinction traditionally exists between admiralty and common-law remedies.[49] The United States

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[43] 372 U.S. 597 (1963).

[44] 670 F.2d at 463; *see supra* text accompanying notes 35-42.

[45] 372 U.S. at 598. In *Weyerhaeuser*, a civil service employee sustained personal injuries in the collision. *Id.* The employees received compensation under the Federal Employees' Compensation Act (FECA) and then filed suit against Weyerhaeuser Steamship Co. to recover damages. *Id.*; *see* 5 U.S.C. § 8102 (1976) (criteria for compensation award). Weyerhaeuser subsequently settled the lawsuit with the employee, who then repaid the United States the amount which he received as statutory compensation, as required by the FECA. 372 U.S. at 508; *see* 5 U.S.C. § 8132 (1976) (section providing for adjustment after recovery from a third person).

[46] 372 U.S. at 604. The Supreme Court reasoned that the Public Vessels Act, under which the plaintiff in *Weyerhaeuser* made his claim, imposes the same liability on the government that admiralty law imposes on the private shipowner. *Id.* at 600; *see* 46 U.S.C. § 781 (1976). The *Weyerhaeuser* Court stated that a private shipowner remains liable for half of the damages, including the settlement to the federal employee. 372 U.S. at 603-04. The Court rejected the government's argument that FECA limited the liability of the government by providing an exclusive administrative remedy for injured federal employees. *Id.* at 600. the Court stated that no evidence existed that Congress, in formulating FECA, considered the rights of unrelated third parties such as the private vessel owner. *Id.* at 601. In accordance with the admiralty rule of divided damages, the Court concluded that FECA did not preclude the private vessel owner from including payments made to the government employee in the overall settlement. *Id.* at 603-04. The *Weyerhaeuser* Court broadened the divided damages rule of *The Chattahoochee* by including a settlement made to an injured third party as a proper item of damage. *Id.*

[47] 670 F.2d at 463. In *Ionian Glow*, the Fourth Circuit applied admiralty law to circumvent the Veteran's Benefits Act. *Id.*

[48] 670 F.2d at 463-64.

[49] *Id.*; *see* Moragne v. States Marine Lines, Inc., 398 U.S. 375, 386 (1970). In *Moragne*, the Court recognized that maritime law existed as a thing apart from the common law. 398 U.S. at 386; *cf.* The Harrisburg, 119 U.S. 199, 205 (1866), *rev'd*, 398 U.S. 375 (1970). In *The Harrisburg*, the Supreme Court held that the maritime law did not provide a different remedy than that applied at common law. *Id.* The Supreme Court, however, overruled the *Harrisburg* decision in Moragne v. States Marine Lines, 398 U.S. at 408-09. In *Moragne*, the Court ruled that the uniformity of maritime law necessitated the reversal of the decision in *The Harrisburg*. *Id.* at 386-87, 409. *See generally* J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES, § 1666 (4th ed. 1873).

Constitution expressly recognizes the existence of a separate body of maritime law.[50] The constitutional grant of admiralty jurisdiction to the federal courts presupposes the existence of a prevailing body of admiralty.[51] The primacy of admiralty doctrine derives from precedents involving ship collisions.[52] In allowing the inclusion of the servicemen's settlement in the division of damages, the Fourth Circuit applied the reasoning of the Supreme Court in *The Chattahoochee* that the rule of divided damages controls.[53]

Prior to *Ionian Glow*, the Fourth Circuit had examined maritime cases involving the application of the divided damages rule in mutual fault collisions.[54] Typically, the Fourth Circuit had divided the total damages resulting from a mutual fault collision.[55] In addition, the Fourth Circuit had held that a statute limiting liability does not bar third-party claims for indemnity.[56] Although *Ionian Glow* did not entail an indemnity suit per se, *Ionian Glow* did involve a similar type of governmental

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[50] *See* U.S. CONST. art. III, § 2, cl. 1. The Supreme Court consistently has decided that a separate body of admiralty as recognized in the Constitution exists aside from the common law. *See, e.g.*, Romero v. International Terminal Operating Co., 358 U.S. 354, 373 (1959) (state law must yield to needs of uniform federal maritime law); The Western Maid, 257 U.S. 419, 435 (1928) (admiralty jurisprudence as adopted by Constitution is distinct from common law and courts must preserve integrity of admiralty principles); American Ins. Co. v. Canter, 7 U.S. (1 Pet.) 685, 690 (1828) (admiralty law as separate body of legal doctrine is as old as navigation itself).

[51] *See* ROBERTSON, ADMIRALTY AND FEDERALISM 138 (1970). *See generally* Deutsch, *Development of the Theory of Admiralty Jurisdiction in the United States*, 35 TUL. L. REV. 116, 118-19 (1960).

[52] *See, e.g.*, The Max Morris, 137 U.S. 1, 9 (1890) (collision in which damages to injured passenger apportioned equally between two vessels involved); The Atlas, 93 U.S. 302, 317 (1876) (Supreme Court distinguished common law from admiralty which provides for apportionment of entire loss in collision cases); The Alabama, 92 U.S. 695, 696 (1875) (each party in collision must pay proportionate share of damages).

[53] 670 F.2d at 464.

[54] *See* Harbor Towing Corp. v. S.S. Calmar, 507 F.2d 720, 720 (4th Cir. 1974) (per curiam) (collision between ship and tug). The Fourth Circuit consistently has applied the divided damages rule in mutual fault collisions. *See also* Partenreederei M.S. Bernd Leonhardt v. United States, 393 F.2d 756, 759 (4th Cir. 1968) (collision between American vessel and German vessel); Thomson v. United States, 226 F.2d 852, 856 (4th Cir. 1959) (collision between private yacht and improperly marked United States wreckage).

[55] *See* Harbor Towing Corp. v. S.S. Calmar, 507 F.2d 720, 720 (4th Cir. 1974) (per curiam) (law requires assessment of one-half of total damages against each vessel); United States v. S.S. Washington, 241 F.2d 819, 825 (4th Cir. 1957) (damages resulting from collision between private tank and United States destroyer divided equally). Following the Supreme Court's holding in *United States v. Reliable Transfer*, however, the Fourth Circuit now divides damages in mutual fault collisions based on the comparative degree of fault of each party involved. *See* 427 U.S. 397 (1975); *supra* note 1 (tracing evolution of divided damages rule).

[56] *See* Wallenius Bremen G.m.b.H. v. United States, 409 F.2d 994, 998 (4th Cir. 1969) (exclusive remedy provision is not per se bar to tortfeasor action for indemnity from government); United States v. The S.S. Washington, 172 F. Supp. 905, 909 (E.D. Va. 1959) (United States liable for statutory death benefits, indemnity, and compensation).

claim of immunity.[57] The Fourth Circuit found that Ionian Glow could receive compensation for its payments to the servicemen regardless of the Veteran's Benefits Act.[58] The division of damages, in effect, allowed Ionian Glow to require the Government to bear a portion of the settlement with the servicemen.[59]

The Fourth Circuit's analysis in *Ionian Glow* presents an alternative view regarding the claims of servicemen.[60] By circumventing the Veteran's Benefits Act, the *Ionian Glow* court held the Government indirectly liable.[61] As a matter of course, servicemen's claims against the government routinely proceed under specific compensation statutes.[62] The Fourth Circuit previously has allowed the claim of a third party for indemnity against the federal government for damages paid to an injured government employee.[63] Relying on the primacy of admiralty doc-

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[57] 670 F.2d at 463. In *Ionian Glow*, the government claimed an immunity associated with the Veteran's Benefits Act. *Id.* By asserting that the servicemen's claims should proceed under the Veteran's Benefits Act, the government sought to escape liability. *Id.*

[58] 670 F.2d at 463. Relying on the historic primacy of admiralty doctrine, the Fourth Circuit reasoned in *Ionian Glow* that the items of damages in divided damages apportionments should include payments made to injured servicemen. *Id.* Since the servicemen did not sue the United States directly, no bar existed to the third-party claimant. *Id.* The servicemen's remedy ordinarily would proceed under a compensation statute. *Id.* Since Ionian Glow settled with the servicemen, however, the shipowners deserved reimbursement because of the divided damages rule. *Id.*; *see supra* notes 49 & 50 (describing admiralty as separate body of law).

[59] *Id.*; *cf.* Empire Seafoods, Inc. v. Anderson, 398 F.2d 204, 218 (5th Cir.) (each responsible party liable for one-half damages to injured third party), *cert. denied*, 383 U.S. 983 (1968). In division of damages between a shipowner and a bridge owner, both at fault in a collision, the shipowner, on paying damages to two injured employees, may treat the payment as part of its collision damages. *Id.* at 217. The shipowner, in turn, can recover from the bridge owner one-half of the settlement paid to the injured employees. *Id.*

[60] 670 F.2d at 463.

[61] *Id.*; *see supra* notes 22-24 (discussion of servicemen's rights under compensation schemes as opposed to general statutes such as Federal Tort Claims Act). In *Ionian Glow*, the servicemen sustained their injuries during activities incident to their duties. 670 F.2d at 463. The application of admiralty law circumvents the Veteran's Benefits Act, which would have authorized compensation instead. *Id.*; *cf.* Brooks v. United States, 337 U.S. 49, 51 (1949) (servicemen allowed to proceed under Federal Tort Claims Act provided injuries not incident to service).

[62] *See* 38 U.S.C. § 331 (1976). *But see* Weyerhaeuser S.S. Co. v. United States, 372 U.S. 597, 601 n.5 (1963). The inadequacy of benefits under compensation statutes, however, has tended to cause federal employees to seek relief under general statutes such as the Federal Tort Claims Act. *Id.*

[63] *See* Wallenius Bremen G.m.b.H. v. United States, 409 F.2d 994, 998 (4th Cir. 1969). The *Wallenius Bremen* court dealt with a third-party indemnity claim arising from an injury sustained by a federal employee on a private ship. *Id.* Although the *Ionian Glow* case did not involve indemnity per se, the reasoning applied remains similar. *See* 670 F.2d at 463-64. In *Wallenius Bremen*, the Fourth Circuit reasoned that in the law of torts, indemnity embraces primary and secondary liability. 409 F.2d at 998. Indemnity shifts the entire loss to one whose fault is primary and relatively more grievous. *Id.* Aside from an express con-

trine, the Fourth Circuit reasoned in *Wallenius Bremen G.m.b.H. v. United States*[64] that a statutory provision should not bar a third-party indemnity claim.[65] The *Wallenius Bremen* court reasoned that no bar appears when a third party's right of action against the United States arises out of an independent duty owed by the government to the third party.[66] In *Ionian Glow*, the Fourth Circuit extended the analysis to encompass the claims of servicemen by relying on admiralty doctrine.[67]

The Fourth Circuit's holding in *Ionian Glow* is consistent with the decisions of other circuits.[68] Courts generally apply the divided damages rule in mutual fault collisions.[69] In addition, courts have followed the Supreme Court's reasoning in *Weyerhaeuser* that statutes enacted to

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tract, indemnity applies only if the person owed a duty to the injured person. *Id.* The Fourth Circuit, however, reasoned that the purpose of indemnity is to shift the burden to the wrongdoer whose conduct is more blameworthy. *Id.* The fact that the wrongdoer employed a defense, such as a statute limiting liability, seemed irrelevant. *Id.* The Fourth Circuit permitted a suit by a shipowner against the United States on the theory that the government's fault appeared primary and its duty extended both to the other party to the collision, the shipowner, and to the injured person. *Id.* In *Ionian Glow*, the United States possessed a duty toward the *M/V Star Light*, Ionian Glow's ship, and its own servicemen. *See generally* 1 F. HARPER & F. JAMES, THE LAW OF TORTS § 10.2, at 718 (1956).

[64] 409 F.2d 994 (4th Cir. 1969); *see supra* note 23 (differences between indemnity suits and admiralty).

[65] 409 F.2d at 995. The *Wallenius Bremen* case involved an action for indemnity against the United States by a shipowner, Wallenius Bremen, a German corporation, which settled a claim brought against it by an injured federal employee. *Id.* The federal employee sustained a severe injury when he fell from an accommodation ladder between Wallenius Bremen's ship and the dock. *Id.* The shipowner sought indemnity from the United States after the settlement of the federal employee's suit on the ground that the United States should have known that the federal employee was unfit for such work. *Id.*

[66] *Id.* at 995-96.

[67] *See* 670 F.2d at 463.

[68] *E.g.*, Nutt v. Loomis Hydraulic Testing Co., 552 F.2d 1126, 1134-35 (5th Cir. 1977) (indemnity granted on basis of divided damages rule in collision between two vessels); Oliver J. Olson & Co. v. American S.S. Marine Leopard, 356 F.2d 728, 737 (9th Cir. 1966) (liability of shipowners to third-party claimants in mutual fault collision regarded joint and several); *cf.* United Air Lines, Inc. v. Weiner, 335 F.2d 379 (9th Cir. 1964). In *Weiner*, the Ninth Circuit denied a claim for indemnity from the United States regarding the wrongful death claim of several government employees and military personnel. *Id.* at 380. The Ninth Circuit, in denying indemnity, relied on the exclusivity provision of FECA and the principle in *Feres*. *Id.*; *see supra* text accompanying notes 19 & 20. The *Weiner* court, however, recognized a fundamental distinction between the rule of indemnity and the rule of divided damages in mutual fault collisions. 335 F.2d at 380. The Ninth Circuit agreed that in a mutual fault collision, a basic right exists to the apportionment of all damages. *Id.* The *Weiner* court recognized that such a right arises from the duty which each shipowner has toward the other to navigate safely. *Id.*

[69] *See, e.g.*, Skibs A/S Siljestad v. S.S. Mathew Luckenbach, 324 F.2d 563, 564 (2d Cir. 1963) (per curiam) (general rule provides for division of costs in a mutual fault case); Tank Barge Hygrade v. The Gatco New Jersey, 250 F.2d 485, 488 (3d Cir. 1957) (collision between diesel tanker and barge pushed by tug); Sea-Land Service, Inc. v. Eagle Terminal Tankers,

limit liability fail in favor of other remedies such as general maritime provisions or indemnity suits.[70] Other courts have recognized the primacy of admiralty doctrine over statutory provisions.[71] As the *Ionian Glow* court reasoned, the admiralty rule of divided damages possesses special historical significance, and therefore becomes distinguishable from the ordinary rule of indemnity.[72]

A practical consequence of *Ionian Glow* is that vessel owners can include settlements to servicemen in divided damages apportionments.[73] In addition, servicemen possess a different recourse other than administrative claims under compensation statutes.[74] After *Ionian Glow*, servicemen may pursue causes of action against private vessel owners, who, in turn, can obtain compensation from the government in divided damages.[75]

The Supreme Court's decisions in *The Chattahoochee* and *Weyerhaeuser* provide strong precedent for the Fourth Circuit's holding in *Ionian Glow*.[76] The *Ionian Glow* decision also is consistent with prior Fourth Circuit cases.[77] These cases support the Fourth Circuit's extension of the divided damages rule to permit the calculation of the servicemen's settlement into the divided damages apportionment. The Fourth Circuit's decision in *Ionian Glow Marine, Inc. v. United States* presents a novel approach to servicemen's compensation claims that is consistent with established principles of maritime law.

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Inc., 443 F. Supp. 532, 534 (W.D. Wash. 1977) (parties in mutual fault share all probable damages equally); *see also supra* note 51 (series of Supreme Court decisions applying divided damages rule).

[70] *See, e.g.*, Roberts v. United States, 498 F.2d 520, 525 (9th Cir.) (jurisdiction under FTCA and general maritime provisions is mutually exclusive), *cert. denied*, 419 U.S. 1070 (1974); Padgett v. Moore-McCormack Lines, 442 F. Supp. 1036, 1038 (W.D. Wash. 1977) (exclusive remedy provision of FECA did not bar third-party indemnity action); Malgren v. United States, 390 F. Supp. 154, 156 (W.D. Mich. 1975) (administratrix of estate of deceased seaman was proper party and not barred by statute).

[71] *See* Lane v. United States, 529 F.2d 175, 180 (4th Cir. 1975) (provisions of admiralty supercede provisions of FTCA); DeBardeleben Marine Corp. v. United States, 451 F.2d 140, 146 (5th Cir. 1971) (application of FTCA over admiralty provision produces irrational and unintentional distinctions).

[72] 670 F.2d at 464; *see supra* text accompanying notes 48-53 (explanation of historical distinction between admiralty and common law).

[73] 670 F.2d at 463; *see supra* text accompanying notes 60-67 (discussion of interaction between statutes and third-party claims).

[74] 670 F.2d at 463; *see supra* note 58 (discussion of servicemen's remedies).

[75] *Id.*; *see supra* note 46 (discussion of third-party settlements in divided damages).

[76] *Id.*; *see supra* text accompanying notes 35-47 (discussion of two leading Supreme Court cases).

[77] *See supra* notes 54 & 55 (discussion of applicable Fourth Circuit cases).