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I. Admiralty

FOURTH CIRCUIT REVIEW

I. ADMIRALTY

Article III, section 2, of the United States Constitution grants admiralty jurisdiction to the federal courts.[1] Because the Constitution neither defines the parameters of admiralty jurisdiction nor provides criteria for setting such parameters, the breadth of this jurisdictional grant has never been clear.[2] Traditionally, if a tort occurred upon the high seas or navigable waters, courts found admiralty jurisdiction to exist.[3] Application of this

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[1] U.S. CONST. art. III, § 2, cl. 1 provides that "the Judicial Power shall extend . . . to all Cases of admiralty and maritime jurisdiction. . . ." This grant was implemented by the Judiciary Act, ch. 20, § 9, 1 Stat. 73, 77 (1789). The Act declared that the district courts shall have "exclusive cognizance of all civil causes of admiralty and maritime jurisdiction." The subject is now covered by 28 U.S.C. § 1333 (1970) which states that the district courts shall have original jurisdiction in "[a]ny civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."

The concept of a separate jurisdiction for admiralty was brought to America by the British settlers and was adopted by many if not all of the colonies. *See* Chamblee, *An Introduction to Admiralty,* 22 MERCER L. REV. 523 (1971); Note, *Admiralty Jurisdiction Over Torts,* 25 HARV. L. REV. 381 (1912); 7 VAND. J. TRANSNAT'L L. 459 (1974). Tribunals within the colonies continued the exercise of power over admiralty cases until the organization of the federal government. *See* Panama R.R. Co. v. Johnson, 264 U.S. 375 (1924)(constitutional provisions presupposed the existence of an admiralty jurisdiction). *See generally* Putnam, *How the Federal Courts Were Given Admiralty Jurisdiction,* 10 CORNELL L.Q. 460 (1925) [hereinafter cited as Putnam].

[2] Green v. Pope & Talbott, Inc., 328 F. Supp. 71, 76 (D.Md. 1971), *aff'd.,* 459 F.2d 365 (4th Cir. 1972); *see* The Lottawanna, 88 U.S. (21 Wall.) 558, 576 (1874) (the extent of admiralty jurisdiction is exclusively a judicial question).

[3] The "strict locality" test of admiralty jurisdiction was described by Chief Justice Story in De Lovio v. Boit, 7 F. Cas. 418 (C.C.D. Mass. 1815) (No. 3,776), as extending admiralty jurisdiction to torts committed on the high seas and ports or harbors within the ebb and flow of the tide. *See* St. Hilaire Moye v. Henderson, 496 F.2d 973 (8th Cir.), *cert. denied,* 419 U.S. 884 (1974); Thomas v. Lane, 23 F. Cas. 957 (C.C.D.Me. 1813)(No. 13,902); 7 VAND. J. TRANSNAT'L L. 459 (1974). This formulation of the rule was modified by The Propeller Genesee Chief v. Fitzhugh, 53 U.S. (12 How.) 233 (1851), which eliminated the tidewater limitation and extended jurisdiction to all waters of the United States which were navigable in interstate for foreign commerce. *See* United States v. Stoeco Homes, Inc., 498 F.2d 597 (3d Cir. 1974), *cert. denied,* 420 U.S. 927 (1975); George v. Beavark, Inc., 402 F.2d 977 (8th Cir. 1968). In *The Plymouth,* 70 U.S. (3 Wall.) 20 (1866), the Court held that a suit in admiralty does not lie where damage occurs on land, even when the damage is caused by the negligent operation of a vessel. *Id.* at 36.

For more extensive discussions of the history and development of admiralty jurisdiction, see Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249 (1972) (plane crash in navigable water); Detroit Trust Co. v. The Barlum, 293 U.S. 21 (1934)(mortgage forclosure on ship); United States v. Bevans, 16 U.S. (3 Wheat.) 336 (1818) (homicide in navigable waters); Bell, *Admiralty Jurisdiction In The Wake of Executive Jet,* 15 ARIZ. L. REV. 67 (1973) [hereinafter cited as Bell]; Black, *Admiralty Jurisdiction: Critique And Suggestions,* 50 COLUM. L. REV. 259 (1950); Deutsch, *Development Of The Theory of Admiralty Jurisdiction In The United States,* 35 TUL. L. REV. 117 (1960) [hereinafter cited as Deutsch]; Putnam, *supra* note 1; Robertson, *Admiralty Procedure And Jurisdiction After The 1966 Unification,*

"strict locality" test resulted in claims having no relation to maritime commerce being entertained in federal courts sitting in admiralty.[4] Consequently, the "strict locality" test failed to provide a specialized body of law to serve maritime commerce which would be uniformly applied, the purpose of the jurisdictional grant.[5] In 1972, the United States Supreme Court modified this jurisdictional test in *Executive Jet Aviation, Inc. v. City of Cleveland,*[6] holding that a cause of action sounding in tort is not cognizable under admiralty jurisdiction unless the alleged wrong occurs on navigable waters and is significantly related to traditional maritime activity.[7] The Fourth Circuit recently applied this "locality-plus" test[8] in *Moore v. Hampton Roads Sanitation District Commission*[9] to reject admiralty jurisdiction in an action arising out of the destruction of oyster beds by a municipal sewage plant.[10]

The plaintiff oystermen were lessees of oyster beds[11] located in a naviga-

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74 MICH. L. REV. 1627 (1976); Zobel, *Admiralty Jurisdiction, Unification, And The American Law Institue,* 6 SAN DIEGO L. REV. 375 (1969).

[4] *See, e.g.,* Davis v. City of Jacksonville Beach, 251 F. Supp. 327 (M.D.Fla. 1965)(injury to a swimmer by a surfboard); King v. Testerman, 214 F. Supp. 335 (E.D.Tenn. 1963) (injuries to water skier).

[5] *See* Adams v. Montana Power Co., 528 F.2d 437, 439 (9th Cir. 1975); Peytavin v. Gov't Employees Ins. Co., 453 F.2d 1121, 1127 (5th Cir. 1972); 1 E. JHIRAD & A. SANN, BENEDICT ON ADMIRALTY § 105 (7th ed. 1974); 27 VAND. L. REV. 343 (1974). *Compare* T. Smith & Son, Inc. v. Taylor, 276 U.S. 179 (1928)(longshoreman knocked from wharf into water by sling lowered from vessel; admiralty jurisdiction denied) *with* Minnie v. Port Huron Terminal Co., 295 U.S. 647 (1935) (longshoreman knocked by vessel's hoist onto adjacent wharf; cause of action in admiralty).

[6] 409 U.S. 249 (1972).

[7] *Id.* at 268. In *Executive Jet,* an airplane struck a flock of seagulls as it was taking off from an airport located on the shores of Lake Erie. As a result of ingesting many of the birds in its engines, the plane lost power and bounced off the runway, settling in Lake Erie. Although there were no injuries, the plane sank and was a total loss. The Supreme Court rejected the contention of the plane's owners that because the plane sank in navigable waters, they should have been entitled to sue the airport in admiralty. *Id.* The Court concluded that it is "far more consistent with the history and purpose of admiralty to require also that the wrong bear a significant relationship to traditional maritime activity." *Id. See generally* Kelly v. United States, 531 F.2d 1144 (2d Cir. 1976); Peytavin v. Gov't Employees Ins. Co., 453 F.2d 1121 (5th Cir. 1972); Bell, *supra* note 3; Birdwell & Whtten, *Admiralty Jurisdiction: The Outlook For The Doctrine Of Executive Jet,* 1974 DUKE L.J. 757; Fallon, *Maritime Tort Jurisdiction—Pre & Post Executive Jet Aviation v. City of Cleveland,* 21 LA. B.J. 169 (1973). The Court noted that some lower courts have required that the traditional maritime activities involve navigation or commerce on navigable waters. 409 U.S. at 256. The Court criticized lower court decisions which "sustained admiralty jurisdiction despite the lack of any connection between the wrong and traditional forms of maritime commerce and navigation." *Id.* at 255-56.

[8] The *Executive Jet* test is a "locality plus" test in that the traditional maritime locality is required *plus* a maritime nexus. 409 U.S. at 268.

[9] 557 F.2d 1030 (4th Cir. 1977), *cert. denied,* 46 U.S.L.W. 3430 (U.S. Jan. 10, 1978)(77-540).

[10] *Id.* at 1037-38.

[11] The Commonwealth of Virginia grants leases of underwater beds for the cultivation and harvesting of oysters at a nominal price for automatically renewable twenty year terms. VA. CODE § 28.1-109(12) (1973).

ble[12] tidal river contiguous with the City of Newport News, Virginia.[13] The plaintiffs claimed that improper operation of a sewage disposal system by the City of Newport News [City] and the Hampton Roads Sanitation District Commission [Commission] resulted in condemnation of their oyster beds by the State Health Commission[14] without just compensation.[15] The sewage system consisted of pumping stations operated by the City which pumped sewage to treatment plants operated by the Commission.[16] The oystermen contended that portions of their oyster beds located around the sewage treatment plant's outflow pipes were permanently condemned for shellfishing purposes pursuant to Food and Drug Administration recommendations that "buffer zones" be established around such outflow pipes to provide a margin of safety in the event a sewage plant should suffer a breakdown.[17] The oystermen alleged that they should have been compensated for the loss of their oyster beds and that failure of the Commission to compensate them constituted a taking of their property without due process of law.[18] The oystermen's claim against the City involved different oyster beds that were closed by the State Health Commission because of actual contamination. The oystermen alleged that negligent operation of the City's pumping stations and lateral sewage conduits resulted in the draining of raw sewage into the Warwick River.[19] In a trial before a jury on the issue of the liability of the City and the Commission,[20] the district court directed a verdict in the Commission's favor on the grounds that the Commission paid the oystermen for that part of the leasehold constituting the outer line of the buffer zone.[21] The district judge also granted the City's motion for judgment notwithstanding the verdict on the

[12] For purposes of admiralty jurisdiction, water is navigable if it is used or is susceptible of being used as an artery of commerce. *See* The Daniel Ball, 77 U.S. (10 Wall.) 557, 559 (1871); Adams v. Montana Power Co., 528 F.2d 437, 439 (9th Cir. 1975); United States v. Stoeco Homes, Inc., 498 F.2d 597, 610 (3d Cir. 1974), *cert. denied,* 420 U.S. 927 (1975); note 3 *supra.*

[13] 557 F.2d at 1031.

[14] For the purpose of protecting the shellfishing industry as well as the public health, the State Health Commissioner may determine that a shellfish area is polluted or has a pollution hazard so great as to make it unfit for oyster cultivation. VA. CODE §§ 28.1-175 to 28.1-181 (1973). On the basis of the Commissioner's determination and in accordance with Food and Drug Administration guidelines, certain areas of the oystermen's leaseholds were condemned. 557 F.2d at 1032; *see* 40 Fed. Reg. 25,930 (1975).

[15] *See* U.S. CONST. amend. V (private property shall not be taken without just compensation).

[16] 557 F.2d at 1032.

[17] Brief For The Appellants at 1; *see* 40 Fed. Reg. 25,930 (1975).

[18] 557 F.2d at 1031.

[19] *Id.* at 1032.

[20] The issue of damages was reserved. *Id.*

[21] *Id.* at 1032 n.3. The district court also concluded that because the buffer zone was established by the State Health Commissioner, closure was an appropriate exercise of the Commonwealth's police power and did not constitute a taking of the oystermen's property by the Commission without due process of law. *Id.; see* note 27 *infra.*

grounds that the doctrine of sovereign immunity[22] and the failure of the oystermen to give the City the required statutory notice of their claims[23] barred the oystermen's action.[24] The oystermen appealed the judgments of the district court[25] arguing that the case fell within the admiralty jurisdiction of the court and that under admiralty law,[26] neither the Virginia doctrine of sovereign immunity nor the statutory notice requirement would bar the plaintiffs from recovery.[27]

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[22] In Virginia, the development of the common law concept of soevereign immunity has established that a municipality acts in a dual capacity. In its governmental capacity, the municipality is immune from liability for negligence. In its properietary capacity, a municipality is subject to liability just as a private individual or corporation. Fenon v. City of Norfolk, 203 Va. 551, 555, 125 S.E.2d 808, 811 (1962); *see* Hoggard v. City of Richmond, 172 Va. 145, 200 S.E. 610 (1939). In Virginia, when the municipality carries out its governmental function, it acts as an agent of the state and hence is a sovereign body. 18 E. McQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS § 53.01a (3d rev. vol. 1977). *Compare* Hoggard v. City of Richmond, 172 Va. 145, 200 S.E. 610 (1939)(operating a swimming pool; held proprietary) *and* City of Portsmouth v. Madrey, 168 Va. 517, 191 S.E. 595 (1937)(operating a ferry; held proprietary) *with* Taylor v. City of Newport News, 214 Va. 9, 197 S.E.2d 209 (1973) (removal of garbage; held governmental) *and* Franklin v. Town of Richards, 161 Va. 156, 170 S.E. 718 (1933)(maintaining a jail; held governmental).

[23] VA. CODE § 8-653 (1957), as it read before the 1973 amendments, required the oystermen to give the City notice of their claims within sixty days. The amended statute now requires that notice be given within six months. VA. CODE § 8.01-222 (1977).

[24] 557 F.2d at 1032.

[25] *Id.* The City and Commission cross-appealed from an interlocutory order denying their motions to dismiss the action in order to preserve their contention that they had an unqualified right to discharge sewage into the river. *Id.* at 1031 n.1. They relied primarily upon Darling v. City of Newport News, 123 Va. 14, 96 S.E. 307 (1918), *aff'd*, 249 U.S. 540 (1919), in which the United States Supreme Court agreed with the Virginia court's ruling that lessees of oyster beds must bear the risk of water pollution. The *Darling* court noted that the leases were held subject to the right of the Commonwealth to authorize municipalities to discharge sewage. 249 U.S. at 543. Virginia has imposed strict controls on the discharge of sewage into state waters since 1939, however, and presently prohibits the discharge of inadequately treated sewage into such waters. VA. CODE §§ 62.1-44.18 to 62.1-44.19 (1973 & Supp. 1977). The Fourth Circuit panel concluded that because the discharge of sewage is no longer legal, the oystermen's right to hold leases on oyster beds is not subject to a right of the City or Commission to violate state law. 557 F.2d at 1033. The court en banc did not address this issue.

[26] When the application of state law will impair uniformity of admiralty law or when an admiralty principle preempts state law, maritime law controls the disposition of all substantive issues. 557 F.2d at 1034; *see* Workman v. New York City, 179 U.S. 552, 563 (1900); Pryor v. American President Lines, 520 F.2d 974, 977 (4th Cir. 1975), *cert. denied*, 423 U.S. 1055 (1976).

[27] 557 F.2d at 1037. The oystermen also appealed the directed verdict in favor of the Commission, arguing that the closure of the oyster beds to cultivation amounted to an unconstitutional taking of property. Brief For The Appellants at 3. The oystermen admitted that they had received compensation for the land directly beneath the outer line of the buffer zone, but maintained that they were also entitled to recover damages for their leaseholds within the buffer zone. *Id.* at 4-5, *citing* United States v. Virginia Elec. & Power Co., 365 U.S. 624 (1960)(where part of a tract is taken in the exercise of eminent domain, the owner is entitled to recover damages for the part taken and for injuries to the residue). The Fourth Circuit panel rejected this argument and affirmed the directed verdict. The panel reasoned that the

On appeal, the Fourth Circuit panel reversed the district court's judgment in favor of the City.[28] The panel's opinion concluded that the case fell within the admiralty jurisdiction of the district court.[29] Applying the "locality-plus" test,[30] the panel reasoned that the affected oyster beds were located in a navigable stream subject to the ebb and flow of the tides, thus fulfilling the locality requirement.[31] In addition, the panel found that the alleged wrong bore a significant relationship to traditional maritime activity.[32] The majority reasoned that the cultivation of oysters is closely related to the harvesting of oysters which, like fishing, is a traditional maritime activity.[33] Because of this close relationship, the panel concluded that interference with oyster cultivation which impairs harvesting fulfills the *Executive Jet* maritime nexus requirement.[34] Applying maritime law to the case,[35] the majority concluded that the City could not claim immunity from liability for negligence.[36] The application of maritime law also controlled the panel's determination that the doctrine of laches[37] rather than the state notice statute should apply.[38] The Fourth Circuit remanded this issue to allow the district court to consider all facts respecting laches.[39]

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oystermen took their leases subject to the right of the Commission to discharge treated sewage. 557 F.2d at 1035; *see* note 25 *supra*. The court en banc did not consider this issue.

[28] 557 F.2d at 1035.

[29] *Id.* Senior Judge Field dissented from the majority's opinion that the destruction of oyster beds falls within the admiralty jurisdiction of the district court. *Id.* at 1035-37 (Field, J., concurring in part; dissenting in part). Field concluded that the cultivation of oysters is not a traditional maritime activity and, for that reason, fails to fulfill the maritime nexus requirement of *Executive Jet*. *Id.; see* note 7 *supra*. Furthermore, Field noted that prior decisions of the United States Supreme Court indicate that the cultivation of oysters is a purely local activity and that therefore the City's intrusion upon the oystermen's leaseholds was not a maritime tort. 557 F.2d at 1036-37 (Field, J., concurring in part; dissenting in part); *see* text accompanying notes 39-45 *infra*.

[30] *See* text accompanying note 7 *supra*.

[31] 557 F.2d at 1034; *see* note 12 *supra; cf.* note 3 *supra* (tidal water requirement no longer exists).

[32] 557 F.2d at 1034; *see* text accompanying note 7 *supra*.

[33] 557 F.2d at 1034.

[34] *Id.*

[35] *See* note 26 *supra*.

[36] 557 F.2d at 1035. Before concluding that maritime law should apply, the panel considered whether the application of state law concerning sovereign immunity and statutory notice would impair the uniformity of admiralty law and whether there was an admiralty principle which preempted state law. *Id.; see* note 26 *supra*. The panel reasoned that because all parties were Virginia residents, the importance of uniformity was reduced. 557 F.2d at 1034. The right of a municipality to claim immunity for performance of governmental functions is narrower under admiralty law than under the common law of Virginia. *Id.* at 1034-35; *e.g.*, Workman v. New York City, 179 U.S. 552 (1900)(cause of action in admiralty based on negligent operation of a fireboat defeats state law vesting a municipality with immunity); *see* note 22 *supra*.

[37] In admiralty, the doctrine of laches provides that where there is no inexcusable delay in seeking a remedy and where no prejudice to the defendant results from the mere passage of time, courts should not deny relief. Gardner v. Panama R. Co., 342 U.S. 29, 30-31 (1951); *see* Chevron Oil Co. v. Hudson, 404 U.S. 97 (1963).

[38] 557 F.2d at 1035.

[39] *Id.*

On rehearing en banc, the Fourth Circuit addressed the issue of whether the case fell within the admiralty and maritime jurisdiction of the district court.[40] The Fourth Circuit reversed the panel decision holding that damage to the oystermen's leaseholds from sewage discharge is not related to the maritime aspects of the oystering industry, and that therefore, the maritime nexus requirement of *Executive Jet's* "locality-plus" test was not satisfied.[41] The court disagreed with the panel's jurisdictional analysis which viewed the case from the perspective of the entire spectrum of the oyster industry.[42] Rather, the court confined its analysis to oyster cultivation[43] finding that activity to be purely local and subject to the laws and jurisdiction of the state.[44] The Fourth Circuit reasoned that oystermen obtained their leaseholds from the Commonwealth of Virginia[45] and that cultivation of oysters on such leaseholds is subject to regulation by the Commonwealth.[46] In addition, the court reasoned that the *Executive Jet* decision suggests that a traditional maritime activity involves navigation or commerce on navigable water; however, the oystermen's activities have nothing to do with commerce until the oysters become the subject of trade.[47] The court recognized that many activities incident to the harvest-

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[40] *Id.* at 1037.

[41] *Id.* at 1039; *see* text accompanying note 7 *supra.*

[42] 557 F.2d at 1037; *see* text accompanying notes 32-34 *supra.*

[43] 557 F.2d at 1037. Neither counsels briefs nor the opinions indicate whether the pollution affected any other phase of oystering besides oyster cultivation.

[44] *Id.* at 1037-38.

[45] *Id.* at 1038; *see* note 11 *supra.* The court noted that the recognition of state sovereignty over lands located beneath navigable waters within their boundaries originated in Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 391 (1845). The title of the state to such land was reiterated in Weber v. Harbor Comm'rs, 85 U.S. (18 Wall.) 57 (1873), and is presently codified at 43 U.S.C. § 1311(a) (1970) which states that "title to and ownership of the lands beneath navigable waters within the boundaries of the respective States . . . and the right and power to . . . lease . . . the said lands . . . in accordance with applicable State law be,. . . vested in and assigned to the respective States. . . ." *See* United States v. Alaska, 422 U.S. 184 (1975); Bonelli Cattle Co. v. Arizona, 414 U.S. 313 (1973).

[46] 557 F.2d at 1037-39. The right of the state to regulate oyster cultivation was affirmed in Smith v. Maryland, 59 U.S. (18 How.) 71 (1855), and McCready v. Virginia, 94 U.S. 391 (1876), and is codified at 43 U.S.C. § 1311(a) (1970). *See* note 45 *supra.* However, state regulations may not change the general features of admiralty law so as to defeat uniform administration. Askew v. American Waterways Operators, Inc., 411 U.S. 325 (1973); Western Fuel Co. v. Garcia, 257 U.S. 233 (1921); Knickerbocker Ice Co. v. Stewart, 253 U.S. 149 (1920). *See also* Judy, *State Protection From Oil Spills: Askew v. American Waterways Operators, Inc.*, 4 ENVT'L L. 433 (1974); Scherr, *Admiralty's Power in Re Oil Pollution: The Ability of the State to Set More Stringent Penalties Than Those of the Federal Government*, 7 NAT. RESOURCES LAW. 635 (1974); 24 ME. L. REV. 299 (1972).

[47] 557 F.2d at 1038; *see* Executive Jet Aviation, Inc. v. City of Clevland, 409 U.S. at 256 (1972); note 7 *supra.* The Fourth Circuit relied upon McCready v. Virginia, 94 U.S. 391 (1876). In *McCready,* the Supreme Court decided that a Virginia statute which prohibited nonresidents of Virginia from planting oysters in the beds of the tidal waters of the state was not a violation of the commerce clause because transportation or exchange of commodities was not involved, but only cultivation and production. "Commerce has nothing to do with land while producing, but only with the product after it has become the subject of trade." *Id.* at 396. *McCready* subsequently as limited by Toomer v. Witsell, 334 U.S. 385 (1948).

ing of oysters are sufficiently related to the maritime aspects of the oyster industry to fulfill the maritime nexus requirement.[48] Nevertheless, because the mere cultivation of oysters is local in character, it lacks the necessary relationship.[49]

On three previous occasions, the Fourth Circuit considered the maritime nexus requirement of *Executive Jet.*[50] Although *Moore* is the first time that the Fourth Circuit applied the "locality-plus" test to deny jurisdiction in a situation that was not specifically addressed in *Executive Jet,*[51] the jurisdictional analysis employed by the court is not new. On each previous occasion, the court weighed the need for uniformity against the local nature of the activity and suitability of state tort law.[52] Other circuits which have confronted the "locality-plus" question in situations not specifically addressed in *Executive Jet,*[53] have not uniformly applied the test.[54] The

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Toomer, which involved a South Carolina statute governing shrimp fishing, distinguished *McCready* as pertaining only to non-migatory fish regulated in inland waters. 334 U.S. at 401; *see* Manchester v. Massachusetts, 139 U.S. 240, 245 (1891). Therefore, the Fourth Circuit's analysis probably would not apply to activities other than oyster cultivation. *Cf.* Adams v. Montana Power Co., 528 F.2d 437, 439 (9th Cir. 1975) (commerce for purposes of admiralty jurisdiction means activities related to the business of shipping).

[48] 557 F.2d at 1039. The court conceded that a collision involving an oyster boat or injury to a crewman on board such a vessel would be considered traditional maritime activities. Id.

[49] *Id.*

[50] The Fourth Circuit denied admiralty jurisdiction in a case involving a water skier's suit against the operator of a towboat for negligently causing his injury. Crosson v. Vance, 484 F.2d 840 (4th Cir. 1973). The court also denied admiralty jurisdiction in a case involving a diving accident in which the driver struck a submerged boat ramp in a lake where the defendant controlled the water level. Onley v. South Carolina Elec. & Gas. Co., 488 F.2d 758 (4th Cir. 1973). In a third case involving pleasure boat torts, the Fourth Circuit held admiralty jurisdiction to exist. Richards v. Blake Builders Supply, Inc., 528 F.2d 745 (4th Cir. 1975). The court felt that *Executive Jet* could not be construed as overruling prior precedent for including pleasure boat torts in admiralty jurisdiction. *Id.* at 749.

[51] The Supreme Court in *Executive Jet* expressly disapproved of the finding of admiralty jurisdiction in Davis v. City of Jacksonville Beach, Fla., 251 F. Supp. 327 (M.D. Fla. 1965)(injury to a swimmer by a surfboard), and King v. Testerman, 214 F. Supp. 355 (E.D. Tenn. 1963)(injuries to water skier). 409 U.S. at 256 n.5. The *Executive Jet* Court also noted the absurdity of granting admiralty jurisdiction in cases involving injury to a swimmer at a public beach "by another swimmer or by a submerged object on the bottom." *Id.* at 255. The Court cited with approval Chapman v. City of Grosse Pointe Farms, 385 F.2d 962 (6th Cir. 1967) (denying admiralty jurisdiction to the claim of a swimmer injured when diving in shallow water). 409 U.S. at 256.

[52] In Crosson v. Vance, 484 F.2d 840 (4th Cir. 1973), the court noted that any reason for federal concern over litigation of pleasure boat torts is vague and uncertain. *Id.* at 841. Moreover, the states are capable of resolving such controversies out of their existing laws. *Id.* The Fourth Circuit in Onley v. South Carolina Elec. & Gas Co., 488 F.2d 758 (4th Cir. 1973), reasoned that the uniform body of rules and expertise of admiralty are irrelevant to the issues in a diving accident. State tort law is most directly concerned with such accidents and is capable of resolving such controversies without any effect on the federal interest in maritime activities. *Id.* at 760. In Richards v. Blake Builders Supply Co., 528 F.2d 745 (4th Cir. 1975), the court criticized the inclusion of pleasure craft torts in admiralty noting the local nature of pleasure boat activities and the ability of state courts to cope with such disputes. *Id.* at 747-49.

[53] *Compare* Adams v. Montana Power Co., 528 F.2d 437 (9th Cir. 1975)(pleasure boat