Limitation of Liability and Pleasure Boats: 65 Years of Judicial Misinterpretation of the Intent of Congress

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I. INTRODUCTION

The Courts and the commentators unanimously agree[1] that the benefits of the Limitation of Liability Act[2] apply to pleasure boats.[3] Both also

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1. *See, e.g.*, Gibboney v. Wright, 517 F.2d 1054 (5th Cir. 1975), Armour v. Gradler, 448 F. Supp. 741 (W.D. Pa. 1978); Application of Thelsen, 349 F. Supp. 737 (E.D.N.Y. 1972); Petition of Klarman, 295 F. Supp. 1021 (D. Conn. 1968); Petition of Porter, 272 F. Supp. 282 (S.D. Tex. 1967). *See also* G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY, § 10-12 (2d ed. 1975), Harolds, *Limitation of Liability And Its Application To Pleasure Boats*, 37 TEMP. L.Q. 423 (1964) [hereinafter cited as Harolds]; Stolz, *Pleasure Boating and Admiralty Erie at Sea*, 51 CALIF. L. REV. 661 (1963) [hereinafter cited as Stolz]; Comment, *Pleasure Boat Owner Tort Liability in Admiralty: An Examination of the Limited Liability Act and a Proposal for Reform*, 50 S. CALIF. L. REV. 549 (1977) [hereinafter cited as Comment, *Proposal for Reform*].

2. 46 U.S.C. § 183 (1976 & Supp. III 1979). Pertinent sections to this article are as follows:

agree that unjust results are reached by applying the act to pleasure boats. Additionally there is universal agreement that there is no legislative history supporting the argument that Congress did *not* intend to exclude pleasure boats from the act.[4] The position taken in this article is that there is enough legislative history to support the conclusion that Congress clearly did not intend the act to apply to pleasure boats. After reviewing this legislative history, I will examine the case law and illustrate how the courts can overrule prior decisions.

II. Legislative History 1851

In the landmark case of *Norwich Co. v. Wright*,[5] the Supreme Court in interpreting the Limitation of Liability Act for the first time stated the purpose of the Act.

> The great object of the law was to encourage ship-building and to induce capitalists to invest money in this branch of industry. Unless they can be induced to do so, the shipping interests of the country must flag and decline. Those who are willing to manage and work ships are generally unable to build and fit them. They have plenty of hardiness and personal daring and enterprise, but they have little capital. On the other hand, those who have capital, and invest it in ships, incur a very large risk in exposing their property to the hazards of

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§ 183(a) The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

(b) In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) of this section is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than $60 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to $60 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts.

(f) As used in subsection (b), (c), (d), and (e) of this section and in section 183b of this title, the terms "seagoing vessel" shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, nondescript self-vessels, canal-boats, scows, car floats, barges, lighters, or nondescript non-self-propelled vessels, even though the same may be seagoing vessels within the meaning of such term as used in section 188 of this title, as amended.

§ 188 Except as otherwise specifically provided therein, the provisions of §§ 175, 182, 183, 183b, 187, and 189 of this title shall apply to all seagoing vessels, and also to all vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters.

3. *See* Petition of Porter, 272 F. Supp. 282 (S.D. Tex. 1967); Comment, *Proposal for Reform*, *supra* note 1.

4. *See* Gibboney v. Wright, 517 F.2d 1054, 1057 (5th Cir. 1975); Petition of Porter, 272 F. Supp. 282, 283-84 (S.D. Tex. 1967); The Muriel, 25 F.2d 505, 506 (W.D. Wash. 1928); Stolz, *supra* note 1 at 708; Harolds, *supra* note 1 at 427; Comment, *Proposal for Reform, supra* note 1 at 575 n. 125.

5. 80 U.S. (13 Wall.) 104 (1871).

> the sea, and to the management of seafaring men, without making them liable for additional losses and damage to an indefinite amount. How many enterprises in mining, manufacturing, and internal improvements would be utterly impracticable if capitalists were not encouraged to invest in them through corporate institutions by which they are exempt from personal liability, or from liability except to a limited extent? The public interests require the investment of capital in shipbuilding, quite as much as in any of these enterprises. And if there exist good reasons for exempting innocent shipowners from liability, beyond the amount of their interest, for loss or damage to goods carried in their vessels, precisely the same reasons exist for exempting them to the same extent from personal liability in cases of collision. In the one case as in the other, their property is in the hands of agents whom they are obliged to employ.[6]

The Supreme Court's interpretation has support in the Congressional history of the Act. Debate concerning the limitation act started after a favorable report to the Senate by the Committee on Commerce. Following the introduction of the report to the Congress, some question was raised to the fact that it was not examined by the Judicial Committee. Portions of this debate illustrate the commercial intentions of Congress:

> Mr. HALE. I have looked at this bill and examined it, and it will be found that it cuts up the whole common law in regard to common carriers in this country. I will not say that it is not right; but I think a bill making such fundamental changes in the common law ought to have the sanction of the Judicial Committee. . . .
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> Mr. HAMLIN. A single word in reply to what has fallen from the Senator from New Hampshire. I have the *ipse dixit* of no judge in any court to offer in favor of the provisions of this bill. I am inclined to believe that our intelligent merchants and commercial men in this country understand quite as well what are the true wants and interests of commerce as any judicial officer in this country. I would rely on those men who are practical merchants, and who are engaged practically in commerce, for better information on this point than you can get from any of your judicial tribunals.[7]

The bill was subsequently laid on the table[8] and more extensive debate did not occur until later in the session.

When the bill was addressed again much of the debate centered around the taking up of the bill for consideration.[9] The debate raged, in

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6. *Id.* at 121-22. In Md. Cas. Co. v. Cushing, 347 U.S. 409 (1954), Justice Clark in a tie breaking concurring opinion interpreted Norwich and stated:

> The basis of the decision was that Congress intended the Act to protect the investment of ship owners, and if the latter were prevented from indemnifying themselves from loss of their investment in the ship it would be contrary to the purpose of Congress as well as to the spirit of commercial jurisprudence.

347 U.S. at 423-24. As can readily be seen the "commercial" purpose has never been understated by the Supreme Court.

7. CONG. GLOBE, 31st Cong., 2d Sess. 332 (1851).

8. *Id.* It was not sent to the judicial committee.

9. *Id.* at 713-715.

part, as follows:

> Mr. DAVIS, of Massachusetts. I concur with the Senator from Maine that this is a measure of considerable importance, touching a very large interest, and touching it somewhat vitally. My friend from North Carolina says that it proposes to change a system which has existed for a great period of time. I wish only to say in reply to that, that it is by a decision, some two or three years since, that the owners of ships have comprehended their liabilities. It is by an interpretation and construction given to them by courts below that they now understand that if a ship lying at the wharf in New York takes fire and burns up without fault on the part of the owners, they are liable as common carriers. This becomes a very serious question—one that affects that interest very deeply; and therefore it is that it is necessary that the law should be changed. Now, I would be very much gratified if the question could be decided this session; and if the Senator from Maine presses the consideration of this measure, I, for one, will sustain him. I am not allowed, upon the question of taking up the bill, to go into the merits of the law that is proposed in the bill. I will only say, that it is the adoption of a system which has been several years in operation in England, with certain alternations merely, as I understand it, to adapt it to the affairs of this country, and nothing more. It is simply placing our mercantile marine upon the same footing as that of Great Britain. We are carriers side by side with that nation, in competition with them, and we cannot afford very well to give them any great advantage over us without affecting our interest very seriously.
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> . . . .
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> Mr. CASS. I will detain the Senate but a moment. I was simply going to remark, that, as I understand this matter, the liabilities of ship-owners in foreign countries have been reduced, while those of our own ship-owners, if not actually increased, have been effectively so by the decision of the Supreme Court. Now, how are we to continue our commercial interest on a firm foundation unless we put our ship-owners on the same footing with those of other countries? Is there a more important matter than one like this, in which the interest of our whole commercial marine is at stake?[10]

Subsequently the bill was taken up[11] and the merits of the bill were discussed. Senator Underwood of Kentucky asked several questions concerning the effect of the bill on the costs of the transportation of goods on the central states, specifically on their inland waterborne transportation.[12]

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10. *Id*. at 714.
11. *Id*. at 715. Ayes 23, nos 13.
12. *Id*. at 716.

> Mr. UNDERWOOD. . . . The people of Kentucky are an agricultural people mainly. We cultivate tobacco, and we raise hogs. We raise a great many articles that enter into the commerce of the world. But we are not the carriers of those articles. Now, sir, whom will this measure affect? Will it reduce freights if we pass this bill? Will it make such a reduction, that my constituents will feel it upon the enhanced price of their pork, tobacco, and other articles which they send to market? Will Tennessee—will Alabama feel it in the enhanced price of their cotton? Will freights come down in proportion as you relieve the shipowners, or those that are interested in the navigation of the ocean? Have they not fixed their tariff of freights heretofore, taking into view all the liabilities which the law imposes upon them? And have we not been paying to this most prosperous interest, per-

In response to his objections to the bill the following amendment was introduced, and commented upon:

> Mr. PEARCE. It might perhaps obviate some of the objections to this bill, if amendments were made to the last section, and I propose to submit one without a speech. In the last section of the bill we find that—
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> "The preceding sections shall not apply to the owner or owners of any canal boat, nor to the owner or owners of any lighter or lighters, employed in discharging and loading vessels, or in transporting goods or other property inland from place to place."
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> I move to strike out all from the ninth to the thirteenth line of the seventh section, inclusive, and substitute the following in its place:
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> "This act shall not apply to the owner or owners of any canal boat, barge, or lighter, or any vessel of any description, which may be used for river or inland navigation."
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> Mr. HAMLIN. I will say but a single word upon that amendment. I am going to interpose no objection to it. There is a class of Senators here who perhaps should understand that matter. If those who represent the interior waters of the country desire such an amendment, I am perfectly willing that it should be made.[13]

The debate, pro and con, concerning the impact on inland commercial waterborne transportation continued[14] and although the amendment was

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haps, in this country, in times past, that indemnity which is sufficient to guard against all those liabilities?

. . . .

It seems to me that we have a bill here of the most important character, affecting the great agricultural interests of the country, and affecting these interests adversely and disadvantageously, for the purpose of benefiting the commercial interests, the mercantile interests, and the ship owners of the country. I am not prepared to vote for it unless I see my way more clearly than I now do. I feel it my duty, therefore, to throw out these objections to the bill, in the hope that before a vote is taken I may be satisfactorily informed upon this subject. Let me see, when the information comes, that it is to affect the agricultural interests that I represent in an advantageous manner—then I will go for it. In regard to the provisions of this bill, as explained by the chairman of the Committee on Commerce, there is much that I heartily approve—that is, if I could separate the first section of the bill from the rest. But if we are to retain the first section, changing the common law, which has been settled ever since the case of Cox and Burnham, I am opposed to it.

13. *Id*. at 717.

14. Interesting portions of the debate are as follows:

Mr. PHELPS . . . . But permit me to remark, that if there be any portion of our navigation which is entitled to the benefit of this change in the common law of the country, it is our inland navigation. It is more subject to accidents against which the utmost foresight and the utmost skill are found to be utterly incompetent to guard. From my own experience in my own immediate neighborhood of the navigation of the waters of the inland sections of the country in which I reside, it is proved that this navigation is more subject to accidents against which they cannot guard than is the navigation of the sea. Under these circumstances, I am opposed to the amendment, because I think, if the principle which is incorporated into the bill be adopted, it should be adopted with respect to all our navigation, internal as well as external. That is all that I have to say upon the subject.

Mr. PEARCE. The memorials which gave rise to this bill came from that class of our people who are interested in ocean navigation; and one of the strongest arguments in support of the bill is, that it will put the ocean navigation of this country upon an equal footing with the ocean navigation of England and other countries. Now, sir, no such argu-

adopted, Senator Seward astutely and correctly predicted:

> Mr. SEWARD. I hope that the amendment will not prevail. I am very sure that it cannot be the desire or the intention of Congress to have one system of liability for ship-owners and general navigation, and another system for the lakes and rivers. We shall have a conflict of principles—a conflict of policy—a conflict in every way producing uncertainty as to what is the law, and producing conflicting adjudication in regard to it.[15]

The importance of the debate as it concerns pleasure vessels is clearly evident. Had the amendment *failed* and the act been extended to inland navigation then the intent of Congress would have clearly been to protect *commercial* navigation on inland waterways as well as on the oceans of the world. However, the amendment did pass. It passed because of a suspicion that the act would increase the risks of losses to inland farmers and merchants. So the act passed, presumedly to assist American shipping immediately, and they lay dormant for 21 years.

III. Early Case Law

In *Norwich Co. v. Wright*,[16] the Supreme Court announced that a shipowner's liability may be discharged by the surrender of his vessel and freight, and, if the vessel was totally lost, that the owners could be discharged without producing anything. After this decision the shipping interests in this country awoke to their new found insurance policy. As we shall soon see inland shipping interest would soon lobby Congress for the benefit

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ment applies to this case. It is very manifest that the passage of this bill without this amendment will operate very disadvantageously to the interests of the inland navigation. I hope that the amendment will be adopted.

Mr. RANTOUL. I shall vote for the amendment, not because I think it is wise—for I think it will be injurious to the interests of those sections that seem to desire it—but because it does not at all affect those sections which are directly interested in foreign navigation. If those other sections prefer a different arrangement for their navigation, I am not at all disposed to interfere with them; but let them make such arrangements as best suit their purpose.

. . . .

Mr. SEWARD. By this amendment we will have one system for ships that are engaged in the State of New York; another system for the commerce on our lakes—on Lake Erie, Ontario, and Michigan; one system for the rivers and lakes, and another system for the ocean navigation. I think there ought to be a uniform law with regard to this subject.

Mr. DAYTON. I suppose the amendment will apply to lake navigation as well as inland navigation.

Mr. SEWARD. They are treated as foreign ports.

Mr. DAYTON. That is the intent, unquestionably.

Mr. WALKER. I hope the amendment of the Senator from Maryland will be adopted, for I think that the great producing interests of the country require it.

Mr. SHIELDS. I also hope the amendment will be adopted. I do not think we have too many guarantees upon our western waters for the safety either of *travel or freight*. I hope the amendment will be adopted.

Id. at 717-718 [emphasis supplied].

15. *Id*.

16. 80 U.S. (13 Wall.) 104 (1871).

of this "free insurance."[17] However, before discussing the amendment which accomplished this change, the application of the original law to pleasure vessels should be addressed.

In *The Mamie*,[18] the steam pleasure yacht, *Mamie*, a vessel enrolled and licensed for the coast wise trade, collided on the Detroit River and sank, drowning seventeen passengers.[19] The owners filed for limitation of liability and the single issue which was litigated was whether the *Mamie* belonged to the class of vessels protected by the act. Interestingly, this issue was one of the first impression for the court.[20] After announcing that "limitation of liability is entirely a creature of statute,"[21] the court traced the jurisprudence of the rest of the world's sea powers and noted the application of their statutes to commercial vessels, and specifically not to non-commercial vessels.[22]

After discussing the application of foreign jurisprudence the court directly confronted the application of America's statute:

> The act itself extends in terms to all vessels, and contains no restrictions except such as are specified in the last section. Rev. St. § 4289. This act "shall not apply to the owners of any canal-boat, barge, or lighter, or to any vessel of any description whatsoever, used in rivers or inland navigation." Hence, any vessel not specially named in this exception, is, *prima facie* at least, entitled to the benefit of the act. At the same time, as Mr. Justice Swayne observed in *Jones v. The Guaranty & Ind. Co.*, 101 U.S. 626, "a thing may be within a statute, but not within its letter, or within the letter, yet not within the statute. The intent of the law-maker is the law." It is perfectly obvious that there must be classes of vessels to which the statute is not applicable, though they are not

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17. This policy increased in value when the Supreme Court excluded the procedures of the hull insurance policy from the *concurus*. The City of Norwich, 118 U.S. 468 (1886).

18. 5 F. 813 (E.D. Mich. 1881), *aff'd*, 8 F. 367 (E.D. Mich. 1881).

19. "Upon the day of her loss she was chartered for $20, by the parish priest of Trinity parish, to carry his acolytes, about 20 in number, upon an excursion to Monroe and back." 5 F. at 815.

20. *Id*. at 815. The Court stated: "There are no authorities directly, and but very few remotely, bearing upon the question, and I am compelled to ascertain by analogy, and by an historical reference to this class of legislation, what was the intention of congress."

21. *Id*.

22. By the commercial code of France, (art. 210) "every owner of a vessel is civilly responsible for the acts of the master, and bound, as regards the engagements entered into by the latter, in whatever relates to the vessel and the voyage. He can in any case free himself from the above-named obligations by the abandonment of the vessel and freight." All the other commercial codes are constructed after the same model (Spain, art. 622; Holland, art. 321; Italy, art. 311; Chile, art. 870). . . . In 1844 it was held by the court of cassation that fishing vessels were not the subject of bottomry bonds, and that by "sea going vessels," as used in the Code, were to be understood all those, whatever their dimensions and denomination, which, with an equipment and a crew proper to them, formed a special service, or engaged in a particular industry. 1 Dufour 118.

> Another commentator upon the Code, in treating of the right of abandonment, says: "But in that which concerns the responsibility of the owners of *boats*, the rules of the maritime law cease to be applied.

Id. at 817.

mentioned in the exception.[23]

The Court discussed the intention of Congress in enacting the law and observed that it, "was to encourage commerce and to enable American vessels to compete with those of other maritime nations whose law extended a like protection to shipowners."[24] This observation led to the conclusion that, "if the vessel be not engaged in what is ordinarily understood as maritime commerce, she is not entitled to the benefit of the act, though she may be an enrolled and licensed vessel, and subject to the navigation laws of the United States."[25] Following this holding the court analyzed the class of vessels specifically excepted from the act: "canal-boats," ordinarily used intra-state on artificial waters;[26] "barges," although defined by Webster as both (1) pleasure boats and (2) flat-bottom vessels used to load and unload ships, was used in the latter sense by Congress;[27] "lighters," a vessel used to load and unload other vessels.[28]

Lastly the Court discussed "vessels, of whatever description, used in rivers or inland navigation," and apparently defined them as vessels engaged in purely local trade.[29] Consequently, following this point-by-point discussion, the court held:

> Now it seems to me clear, from the above exceptions, that congress did not intend the act should apply to vessels engaged in purely local trade, and *a fortiori* to a vessel not built for the purpose of trade, but of pleasure; not run upon any regular route, not engaged in the business of carrying freight or passengers. I do not undertake to say that pleasure yachts, making long voyages upon the lakes or ocean, may not be within the act, but I think pleasure boats, whether propelled by steam or sail, engaged in purely local navigation, running in and out of the same port, though sometimes carrying passengers for hire, fall within the exception.[30]

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23. *Id*. at 818.

24. *Id*. at 819.

25. *Id*. at 819. A conclusion that sounds extremely "modern." *Accord*, Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249 (1972).

26. *Id*.

27. *Id*. The Court went on to astutely observe:

> In later years the word has been used to designate a class of large vessels, sometimes costing from $15,000 to $50,000 carrying large cargoes, and depending for their motive power wholly or in part upon steamers, to which they are attached by tow-lines, and employed to a very large extent in interstate commerce upon the lakes. Whether the owners of such barges would not be entitled to the benefit of the limited liability act, is an open question. Undoubtedly they are within the letter of the exception, but as they are a class of vessels which was unknown at the time the act was passed, it would seem they are not within its spirit. I see no reason in principle why they are not as much within the act as the propellers which furnish them their motive power.

Id. at 819-820.

28. *Id*. at 820.

29. *Id*.

30. *Id*. Additionally, and importantly, the Court also observed: "Neither do the facts that a court of admiralty would have jurisdiction over the vessel, nor that she is subject to the navigation

In the *Mamie* the Court essentially analyzes the Limitation of Liability statute twice in the decision. First the court looked to the overall purpose of the act and held that it was limited to commercial vessels. Secondly, the Court analyzed the specific exceptions and held that a pleasure vessel involved in purely local navigation was excepted from the benefits of the act. They, however, did not express an opinion on the statutes of transoceanic pleasure yachts under the act.[31] Five years following this decision, Congress amended the act and eliminated the specific exceptions.

IV. Legislative History 1886

Actually, the legislative history of the amendment to the act eliminating the stated exceptions begins in 1885 when a bill to amend the act was introduced and referred to the House Committee on Commerce.[32] Although this bill varied from the ultimate amendment which passed in 1886, the House Committee report [hereinafter committee report] is very enlightening. The proposed bill read:

> The provisions of the seven preceding sections relating to the limitation of the liability of the owners of vessels shall apply to all sea-going vessels, as well as all steam vessels used in rivers or inland navigation, but shall not apply to any canal-boat, barge, or lighter.[33]

The committee reported that the object of the proposed amendment was "to include *all steam-vessels,* except canal-boats, barges, or lighters, under the same rule of liability."[34] The committee urged the adoption of this amendment, reasoning that "there is no reason in equity or justice why that internal navigation should not have the same protection and *encouragement* as upon the high seas or the great lakes."[35] After a lengthy discussion concerning the discrimination between vessels involved in

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and inspection laws of the United States, and bound to carry the ordinary lights of a steamer, have any material bearing upon this question." *Id*. at 821.

31. Local travel by pleasure yachts on the ocean would have been excluded by the Court. *Id*. at 820.

32. 16 Cong. Rec. 1756 (1885).

33. H.R. Rep. No. 2639, 48th Cong., 2d Sess. 1 (1885).

34. *Id*. [emphasis added].

35. *Id*. at 2 [emphasis added]. The committee gave the following illustration to show the difference location of an accident had in regards to the then applicable law:

> The law in its application is thus illustrated: Two vessels meet with a like disaster, from a similar cause, and with the same results. Say one vessel is plying between New Orleans and Galveston; the other from New Orleans to Vicksburg, on the Mississippi River. Suits for losses are brought, and both cases submitted to the same court for settlement. Under the law the judge must decide in the one case that the owners of the Galveston steamer can be held only for the proportion of any or all liabilities that their individual share in the vessel bears to the whole; while in the other case he must hold the owners of the Vicksburg steamer liable to the full extent of the losses proved. In other words, the owners of the Galveston steamer cannot be held beyond her value at or after the time of accident, while in the other case there is no limit, and the judgment may be enforced beyond the value of the vessel itself, and extend to other vessels, and even to property on shore.

commerce on the high seas and those involved in *commerce* on the inland waterways, the committee outlined the following objectives of the proposed amendment:

> We think that by the amendment proposed, the following important objects will be attained: (1) Retaining the ownership of steamers in responsible hands; (2) placing the steam navigation of the country on the same footing with other commercial nations; (3) by thus limiting liability and fixing a mode of ascertaining it, encouraging the investment of capital by responsible parties in this class of property; (4) it will tend to encourage and sustain the carrying trade in the hands of our own capitalists.[36]

It must be born in mind that the *only* difference between this bill and the amendment which finally passed, is that the latter *included* canal-boats, barges and lighters. There is *no other difference*! Thus, the stated objective of the bill introduced in 1885, as it related to vessels other than canal-boats, barges and lighters, is extremely relevant because it must be assumed to be the same unless it was refuted. I have found no such refutation.

The reported-upon bill simply extended the benefits of the limitation act to seagoing vessels involved in accidents on the inland waters. The same commercial purpose which was espoused in 1851 was being argued in 1885.

In 1886 four bills were introduced to the Congress to amend the Limitation of Liability Act.[37] Eventually the amendment passed as an add-on to a bill dealing with various other shipping laws.[38] Of the four bills introduced, one was debated.[39] After amendment on the floor of the House, the debated bill read in part:

> [The act] relating to the limitations of the liability of the owners of vessels, shall apply to all sea-going vessels, and also to all vessels used on lakes or rivers or inland navigation, including canal-boats, barges, and lighters.[40]

This bill was immediately opposed on the floor of the House:

> Mr. DINGLEY. Mr. Chairman, with reference to the amendment moved by the gentleman from Pennsylvania (Mr. O'NEILL), the Shipping Committee has maintained the exception which has always been observed in our limited-liability law. The exception now embraced in the Revised Statutes as to canal-boats, barges, or lighters is an exception which was placed in the first limited-liability act passed in 1851, and I wish merely to restate the reasons which then governed the action of Congress.
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> The limited liability was granted to vessels mainly on these grounds: First,

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36. *Id*. at 3.

37. They were, H.R. REP. No. 1596, 49th Cong., 1st Sess. (1886); H.R. REP. No. 2073, 49th Cong., 1st Sess. (1886); H.R. REP. No. 3653, 49th Cong., 1st Sess. (1886); and S. REP. No. 1088, 49th Cong., 1st Sess. (1886).

38. The bill was H.R. REP. No. 4838, 49th Cong., 2nd Sess. (1886).

39. 17 CONG. REC. 1146-1148 (1886).

40. *Id*. at 1146.

that the vessel goes beyond the control of its immediate owner, and can not be under his immediate care; secondly, that it encounters peculiar and exceptional perils of navigation; and, thirdly, that it is in the interest of public policy to grant this exceptional privilege to the owners of shipping property. It was argued that these exceptions did not apply, at least in their ordinary force, to canal-boats, barges and lighters—first, because these vessels are usually employed in a harbor or on a canal, and do not meet the ordinary perils of navigation; secondly, that they are always, when moved, attachments of other vessels; and, thirdly, that as the limited-liability act provided that the aggregate measure of liability should be the value of the vessel and pending freight, these vessels afforded a small measure of aggregate liability.[41]

The supporters of the amendment countered with the argument that the shipping industry on the inland waters had increased substantially since 1877 and that the shipping interests on the inland waters deserved the same protections of the act as ocean-going vessels.[42] A debate followed

41. *Id.* at 1146-1147.

42. [Mr. O'NEILL, of Pennsylvania]. . . . We are seeking to do the best we can for American shipping; and we now have an opportunity to include these vessels in the provisions of the general law on this subject. No sufficient reason is presented in favor of continuing the exception which was made years ago. I ask this Committee of the Whole to adopt this amendment. It can certainly do no wrong to any one. It can not affect adversely the shipping interests. It does not impose any additional fee upon any one. It simply gives to the owners of these smaller vessels the same rights that are accorded to the owners of larger vessels.

Mr. BURLEIGH. I certainly hope the amendment of the gentleman from Pennsylvania will be adopted. In 1852 the tonnage of a canal-boat was from 60 to 80 tons. Now they carry from 200 to 300. In 1852 they simply navigated canals. Now a canal-boat takes a load at Quebec or Ottawa and delivers it at New York, Philadelphia, or Baltimore. The whole system of transportation has changed, and it is as important to accommodate shippers on the lakes, rivers, and canals as any others. Therefore I sincerely hope the amendment of the gentleman from Pennsylvania will be adopted.

Mr. BOYLE. Mr. Chairman, I understand the effect of this section, if adopted, will be to extend to vessels engaged in lake and other inland navigation the same exemption from liability which the owners of vessels engaged in ocean navigation enjoy under the act of 1851. The gentleman from Arkansas [Mr. DUNN] says that the legislation already upon the statute-book extends to lake navigation. If so, the effect of this section will be to extend it to carriers on rivers.

A MEMBER. And canals.

Id. at 1147. It should be noted that Congress may have associated "commerce" and "navigation" synonymously.

If commerce does not include navigation, the government of the Union has no direct power over that subject, and can make no law prescribing what shall constitute American vessels, or requiring that they shall be navigated by American seamen. Yet this power has been exercised from the commencement of the government, has been exercised with the consent of all, and has been understood by all to be a commercial regulation. All America understands, and has uniformly understood, the word "commerce," to comprehend navigation. It was so understood, and must have been so understood, when the constitution was framed. The power over commerce, including navigation, was one of the primary objects for which the people of America adopted their government, and must have been contemplated in forming it. The convention must have used the word in that sense, because all have understood it in that sense; and the attempt to restrict it comes too late.

Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 190 (1824).

concerning the merits of the bill. The commercial navigation connotations of the bill were stressed, and, as a matter of fact, pleasure vessels could not have been further from the minds of the congressmen debating the effect of the bill.

> Mr. BOYLE. What I complain of is that the law you are enacting here for the carriers by water is not the law that governs other classes of common carriers.
> Mr. DUNN. You should have made that argument in 1851.
> Mr. BOYLE. I was not here to make the argument at that time, but I make it at the earliest possible opportunity.
> Mr. O'NEILL, of Pennsylvania. Mr. Chairman, a word in response to what my colleague from Pennsylvania has said. I do not think my colleague has any objection to including canal-boats, barges, or lighters, because the provisions of the limited-liability law apply to all vessels, whether on the lakes or rivers or engaged in any inland navigation. This would perfect the section by including all vessels, whether canal-boats, barges, or lighters. His objection appears to be to the limited-liability clause generally, and I do not suppose he makes that objection to the amendment which I have offered.
> Mr. BOYLE. I will say, Mr. Chairman, that I can see no reason for discriminating between canal-boats or lighters and steamboats and *other vessels employed in commerce*.
> Mr. HENDERSON, of Iowa. I do not understand the argument of the gentleman from Pennsylvania reaches to the point of refusing to relieve inland navigation of these burdens which do not rest on our coastwise trade?
> Mr. BOYLE. I would not discriminate against inland navigation. But I wish to say that if I had been here in 1851 I should have voted against relieving ocean vessels from these liabilities, and I will go no further in that direction.[43]

Although the amendment failed in the House it later passed as an add-on in the Senate and was agreed to by joint committee.[44] The purpose of the amendment was simply stated by the committee as:

> [extending] the limited-liability rule to canal-boats, barges, and lighters, thus making the rule apply to all vessels on inland waters as on the ocean and lakes.[45]

It is clear from the above-discussed legislative history that the intent of Congress was to extend the act to all *commercial* vessels on inland waters. The intent expressed by Congress in 1851 to aid American commercial shipping was the foundation of the proponents of the amendment in 1886 to give the same benefit to inland shipping. Considering the objections expressed concerning the extension of this act to inland *commercial* vessels, had the act also been intended to extend protection to pleasure vessels,[46] a howl would have surely risen from the floor of the Congress driving the proposal to cover.

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43. *Id*. at 1147-1148 [emphasis added].
44. *Id*. at 4991-4992.
45. *Id*. at 4992.
46. Pleasure vessels were not covered by the 1851 act. The Mamie, 5 F. 813 (E.D. Mich. 1881), *aff'd*, 8 F. 367 (C.C.E.D. Mich. 1881).

If the legislative history is as clear as I proposed it is, why have the courts extended the act to include pleasure boats? Although no definite answer can be given, a study of the cases raises some possible conclusions.

V. The Cases: A Statute Read in a Vacuum

The first case to examine the amended act was the 1905 decision of *In re Eastern Dredging Co., The Scow No. 34*.[47] In that case a scow carrying mud from Boston Harbor to a dumping ground collided with a ferryboat and sought limitation of liability. The court found that the mud scow, which measured 110 feet by 34 feet, was the same kind of vessel as a barge or lighter, hence, a vessel covered by the act.[48] Another issue decided by the court was whether Congress intended the act to extend to vessels not engaged in "the business of carrying merchandise or passengers or both, nor to those engaged in purely local trade."[49] The "reasoning" of the Court is very important to the growth of the misinterpretation of the amended act:

> [The *Mamie*] derived [its] chief support from section 4280 as it then stood. *The change since made in that section requires a different view of the intent of Congress*. . . . There is no expression in the act, as it now stands, to indicate that the nature of the employment in which a vessel is engaged is to be considered in determining whether or not the act is to apply to her. That question is made to depend entirely upon the waters whereon she is used. The waters whereon the petition alleges this scow to have been used are unquestionably waters within the admiralty jurisdiction, and, having held her to be a vessel within the meaning of the act, I am unable to regard the nature of her employment as in any way material.[50]

It is clear that the Court interprets the intent of Congress solely by the change in the statute. The only source used by the Court to reach this conclusion was the four corners of the statute. However, as we have already seen, the legislative history of the amendment and of the original act contemplated an application of the act only to commercial activities.[51] The fallacy in interpreting the act without considering the intent of Congress in both 1851 and 1886 is clear when one reads the original act which on its face does not exclude pleasure craft. Thus, attempts to distinguish *The Mamie* by the Court in *Eastern Dredging* fail, because the Court in *The Mamie* did examine the intent of Congress in detail and correctly held that

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47. 138 F. 942 (D. Mass. 1905).

48. *Id*. at 944.

49. *Id*. at 944-945 [citing *The Mamie*].

50. *Id*. at 945 [emphasis added].

51. If there had been no objection to the act applying to inland waters in 1851 it is probable that *no* stated exception concerning the application of the act would have been proposed. Would the primary intent of Congress to aid American shipping interests have been less? No, I don't believe so.

Congress desired to extend the act to commercial vessels on the high seas, not to pleasure vessels.

Following *Eastern Dredging* the application of the limitation act to pleasure vessels was first reported in the case of *The Alola*.[52] Absolutely no discussion concerning the intent of Congress is made by the Court in this case.[53] Another typical decision which "discusses" the intention of Congress in the amendment of the act in 1886 is *The Muriel*.[54] Treating the issue, the Court simply states, "In the amendment of 1886 it appears to have been the intention of Congress to grant the privilege of limiting liability to all water craft. . . ."[55] The most recent case which attempts to interpret the intention of Congress in the context of extending the limitation act to include pleasure vessels is *The Yacht Julaine*.[56] There, the Court traced the *judicial history* concerning the Court's interpretation of the intention of Congress and reluctantly found that the act applied to pleasure boats.[57] A similar result was reached in *Armour v. Gradler*[58] which agreed that the statutory purpose of the Act was to encourage shipbuilding and commercial shipping,[59] but was reluctant to overrule the long judicial history interpreting the act.[60]

VI. Conclusion: The Courts Should Overrule Prior Decisions

The application of the limitation act to pleasure vessels has not been squarely addressed by the Supreme Court.[61] Also, modern judicial interpretations concerning admiralty jurisdiction,[62] as well as good old-fashioned common sense,[63] do not favor application of limitation of liability to pleasure vessels.

Additionally, liberal application of the act is no longer the express in-

52. 228 F. 1006 (E.D. Va. 1915).

53. For an excellent breakdown of the cases which *don't analyze* the act in regards to pleasure vessels refer to Comment, *Proposal for Reform*, *supra* note 1, at 576-577 n. 134.

54. 25 F.2d 505 (W.D. Wash. 1928).

55. *Id.* at 506. Other cases which treat the issue with equal thoroughness are: The Pegeen, 14 F. Supp. 748 (S.D. Cal. 1936); Petition of Liebler, 19 F. Supp. 829 (W.D.N.Y. 1937); Feige v. Hurley, 89 F.2d 575 (6th Cir. 1937); The Trim Too, 39 F. Supp. 271 (D. Mass. 1941); Klulack v. The Pearl Jack, 79 F. Supp. 802 (W.D. Mich. 1948); Petition of Colonial Trust Co., 124 F. Supp. 73 (D. Conn. 1954).

56. 272 F. Supp. 282 (S.D. Tex. 1967).

57. *Id.* at 283-286.

58. 448 F. Supp. 741 (W.D. Penn. 1978).

59. *Id.* at 749.

60. *Id.*

61. Harolds, *supra* note 1 at 430; Comment, *Proposal for Reform*, *supra* note 1 at 584, n. 165.

62. Executive Jet Aviation v. City of Cleveland, 409 U.S. 249, 253-261 (1972).

63. "Common sense often makes good law." Petition of Madson, 187 F. Supp. 411, 414 (N.D.N.Y. 1960).

tent of the courts.[64] In *Petition of the Diesel Tanker A.C. Dodge, Inc.*,[65] the Court was faced with the issue whether a tanker was a seagoing vessel, hence liable to contribute $60 per ton to the limitation fund as per the requirements of 46 U.S.C. § 183(f). The Court held:

> Only as to a "seagoing vessel" may the owner be required so to increase a limitation fund in order to satisfy death and personal injury claims. 46 U.S.C. § 183(f) states that the term "seagoing vessel" is not to include "tank vessels." This is hardly a felicitous expression, since it is by no means clear that "tank vessels" and "tankers" are synonymous. . . . The correct interpretation of 46 U.S.C.A. § 183(f) is not free from doubt. However, we think that ambiguous language in statutory provisions relating to limitation of liability should be resolved in favor of interpretations increasing the instances where full recoveries from the limiting vessel are possible.[66]

I encourage the courts to examine the legislative history of this act, and apply the above-stated purpose to the application of the act to pleasure vessels. Why? Because the purpose of the act was clearly not to limit the liability of pleasure vessels. The act was not intended to be an offensive weapon for pleasure boat owners who would not be discouraged from buying a small pleasure boat if the act did not apply to them.[67] Since no rational reason has been given to allow this harsh rule to apply to pleasure boats the *Mamie* should be salvaged, refloated and launched upon the maritime waters which constitute American admiralty jurisprudence.

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64. Donovan, The Origins and Development of Limitation of Shipowners' Liability, 53 TULANE L.REV. 999, 1035-1036 (1979).

65. 282 F.2d 86 (2d Cir. 1960).

66. *Id.* at 89.

67. *Compare* Petition of Madson, 187 F. Supp. 411 (N.D.N.Y. 1960), *with* Lake Tankers Corp. v. Henn, 354 U.S. 147 (1957).