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Maritime Law - Common Sense and Nonsense Stand Face to Face in the Fourth Circuit - Hassinger v. Tideland Electric Membership Corp.

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NOTE

MARITIME LAW—COMMON SENSE AND NONSENSE STAND FACE TO FACE IN THE FOURTH CIRCUIT—Hassinger v. Tideland Electric Membership Corp.

INTRODUCTION

In Hassinger v. Tideland Electric Membership Corp.,¹ the United States Court of Appeals for the Fourth Circuit took a small yet significant step in its development of maritime² law. The court held that a pleasure vessel owner can invoke the federal courts' maritime jurisdiction in a personal injury tort claim if the claim bears a significant relationship to traditional maritime activity and occurs within the boundary of navigable waters, regardless of whether the tort was actually consummated in the water. The decision represents a common sense approach to handling a problem in a field of law where common sense solutions are at times lacking.

This Note analyzes the Hassinger opinion in two sections. After a discussion of the case and the background of maritime jurisdiction, the first section considers the inappropriate use of a dis-

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strict court case cited for support in Hassinger. The second section considers the anomalous jurisdictional results created for pleasure vessel owners who use boat launching ramps when the Hassinger holding is combined with the holding of Hastings v. Mann, another Fourth Circuit opinion written twenty-two years ago.

THE CASE

In the early afternoon of June 5, 1982, Charles Hassinger, Stuart Powell, and Robert Proctor were electrocuted while beaching Hassinger's eighteen-foot Hobie Cat sailboat when the boat's mast contacted an overhead, "energized, uninsulated power line carrying 7,200 volts of electricity." Earlier that morning the three men and a companion, Rex King, had been sailing across Pamlico Sound to Silver Lake in two Hobie Cat sailboats. Upon reaching what appeared to be a suitable spot on the shoreline of Silver Lake to beach the boats, it was decided that Hassinger's boat would be pulled ashore first, while Powell's boat remained in the water. While beaching Hassinger's boat, the tragic electrocutions occurred.

Administrators for the three decedents' estates brought federal wrongful death suits against three parties—Tideland Electric


5. The origin of the Hobie Cat sailboat design "started with an idea and a sand drawing. During a conversation after surfing one California morning, Hobie Alter discussed the first Hobie Cat with a friend while sketching his original design with a stick in wet sand. The result . . . [was] a lightweight high speed . . . catamaran that could be rigged, sailed, and righted from a capsize by a single person . . . ." Hobie Cat "14" Sales Brochure: 1981.

6. Hassinger, 781 F.2d at 1024.

7. "Silver Lake is a navigable body of water located in Hyde County encompassed by Okracoke, North Carolina. The waters of Silver Lake are tidal waters, subject to the ebb and flow of the tide; in addition, its waters are used for commercial purposes by ferry boats and fishing boats." Hassinger v. Tideland Electric Membership Corp., 627 F. Supp. 65, 68 n.2 (E.D.N.C. 1985).

8. "It is unclear whether all four men participated in pulling the Hassinger boat ashore, or whether Proctor, Hassinger and King were in the process of beaching the boat when the mast struck the power line, and Powell attempted to rescue his companions." Hassinger, 627 F. Supp. at 68 n.3.

9. In 1886, in The Harrisburg, 119 U.S. 199 (1886), the Supreme Court held that general maritime law afforded no remedy for wrongful death in the absence of an applicable state or federal statute. This rule controlled until 1970, when the Supreme Court held in Moragne v. States Marine Lines, Inc., 398 U.S. 375 (1970),

10. According to a Hobie Cat sales representative at Wrightsville Beach, North Carolina, many of the future models of this sailboat will feature fiberglass mast-tips to reduce the electrical conductivity of the mast. The sales brochure for the Hobie Cat “17”, however, explains the purpose of this new fiberglass mast-tip from a different perspective. The brochure states that “[w]hile three-quarters of the mast is aluminum, the top 8½-foot section is beautifully tapered and constructed of composite fiberglass materials. Being much more flexible than aluminum, the fiberglass tip allows a wider range of adjustment and control of sail shape. The taper reduces aerodynamic drag and allows a cleaner, more efficient air flow onto the sail.” HOBIE CAT “17” SALES BROCHURE: 1985.

11. Coleman was an original defendant in this lawsuit, so named because it, along with its wholly-owned subsidiary, Coast Catamaran, allegedly designed, manufactured and sold the Hobie Cat sailboat involved in the accident. By order dated October 30, 1985, and published at 622 F. Supp. 146 (E.D.N.C. 1985), the district court granted Coleman’s motion for summary judgment, holding that plaintiffs had failed to show the requisite degree of control and circumstances of fraud required under North Carolina’s “alter ego” or “instrumentality” doctrine to hold Coleman accountable. Id. at 151-52.

12. “The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled . . . .” 28 U.S.C. § 1333 (1976).

13. “The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land . . . .” 46 U.S.C. § 740 (1976).

The district court found that because jurisdiction was present under 28 U.S.C. § 1333 regarding all the defendants, it was not necessary to address whether jurisdiction also existed under the Admiralty Jurisdiction Extension Act. Hassinger, 627 F. Supp. at 72 n.11.


time jurisdiction over Coast and Coleman pursuant to 28 U.S.C. section 1333 and 46 U.S.C. section 740, and federal diversity jurisdiction pursuant to 28 U.S.C. section 1332.15

Defendants moved in the district court to dismiss all of the maritime jurisdiction claims, alleging that the sailboat was out of the water when the accident occurred,16 and therefore no maritime locality, or situs, existed. Defendants also maintained that there was no significant relationship to traditional maritime activity, or nexus, present.

The district court denied the defendants' motion, holding that for purposes of maritime jurisdiction, the navigable waters in tidal areas extend to the mean high water mark (MHW-Mark), even when the tide is below this line. Because the sailboat was below the MHW-Mark when the accident occurred, the situs for maritime jurisdiction was present.17 Furthermore, the court found that the activity of the decedents in beaching the sailboat bore a significant relationship to traditional maritime activity; therefore the nexus for maritime jurisdiction was also present.18 The Court of Appeals for the Fourth Circuit affirmed the district court's finding that the situs and nexus requirements for maritime jurisdiction were satisfied.19 A jury trial on all issues was then conducted during early 1986, with plaintiffs recovering $843,190 for the deaths of the three decedents.20

to dismiss these claims, however, was granted by the district court in its order dated April 18, 1985, on the basis that neither statute created a private enforcement mechanism—both statutes were found to be enforceable only by the federal government in its efforts to respond to obstructions on navigable waters. Hassinger, 627 F. Supp. at 73.

15. The diversity statute reads, in part:

"(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between-

(1) citizens of different States;


16. The court noted that evidence stating that the sailboat was at least partially in the water when the accident occurred was confirmed by at least sixteen witnesses; whereas, evidence stating that the sailboat was not in the water, but on dry ground, was confirmed by at least four witnesses. Hassinger, 781 F.2d at 1024-25.


18. Id. at 72, 74.


20. Prior to trial, the parties consented to the case being tried by a Magis-
BACKGROUND

A. The Constitutional and Statutory Basis for Maritime Claims

Though the precise origins of maritime legal principles are disputed, its law "has evolved over many centuries, designed and molded to handle problems of vessels relegated to ply the waterways of the world, beyond whose shores they cannot go." The maritime jurisdiction of the federal courts arose from the conviction of the Constitutional Convention's members that there was need for a uniform body of laws, in general harmony with the laws of other maritime nations, "to protect the domestic shipping industry in its competition with foreign shipping." For the Convention members, thirteen bodies of law would be unacceptable for governing the new nation's international trade. Those in the shipping industry needed uniform laws to give some type of predictability concerning their rights and liabilities.

The constitutional authority for creating this uniform set of rules was drafted in article III of the Constitution. This article enabled the federal courts to accept and adopt the maritime law of other nations, thereby creating the uniformity needed to regulate
the shipping industry. The statutory authority giving the federal courts exclusive jurisdiction to hear cases within the field of maritime law is now found in section 1333 of title 28. Section 1333's "saving clause", however, creates an exception for maritime plaintiffs which allows them an important option. They are not required to bring in personam tort and contract claims under section 1333's admiralty provision. Rather, they can bring these claims in the state courts, or in the federal courts as section 1332 diversity claims.

The principal advantage to "saving clause" plaintiffs for bringing personal injury claims outside of section 1333's admiralty provision is two-fold. First, the section 1332 diversity plaintiff suing in federal court on a maritime claim has a right to a trial by jury, whereas the section 1333 admiralty plaintiff ordinarily has his case tried by the court. Most plaintiffs undoubtedly seek jury trials because they perceive juries to be more sympathetic to their plight than the trial judge. Second, all substantive issues in maritime

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26. The Lottawanna, 88 U.S. (21 Wall.) 558, 572-77 (1874) (drawing the analogy between adoption of maritime and common law). Furthermore, most maritime legislation falls within the commerce power as well, since maritime activities are closely related to interstate and international trade.

27. See supra note 12.


29. For more than a century, the early effect of the saving-to-suitors clause was to permit state courts to hear maritime cases and to apply their own law, which defeated the very purpose of the federal maritime grant. It was not until Southern Pacific Co. v. Jensen, 244 U.S. 205 (1917) that the Supreme Court had the opportunity to hold that maritime law displaces common law in non-maritime courts whenever the two conflict. Id. at 216, 222-23.


32. Commenting on the jury's sturdy democratic virtues, Justice Hunt, in Sioux City & Pac. R.R. v. Stout, 84 U.S. (17 Wall.) 657 (1873), stated:

Twelve men of the average of the community, comprising men of education and men of little education, men of learning and men whose learning consists only in what they have themselves seen and heard, the merchant, the mechanic, the farmer, the laborer; these sit together, consult, apply their separate experience of the affairs of life to the facts proven, and draw a unanimous conclusion. This average judgment thus given it is the great effort of the law to obtain. It is assumed that twelve men know more of the common affairs of life than does one man, that they can draw wiser and safer conclusions from admitted facts thus oc-
cases are governed by federal maritime law, regardless of which forum the plaintiff chooses.\textsuperscript{33} This application of maritime law to "saving clause" diversity claims brought under section 1332 is particularly important if the plaintiff was negligent, because the law of comparative negligence will apply.\textsuperscript{34} In the North Carolina federal courts this would be of central concern to a negligent plaintiff because under \textit{Erie} principles,\textsuperscript{35} if North Carolina law were held to apply, contributory negligence could bar any possible recovery.\textsuperscript{36}

"Saving clause" plaintiffs and those plaintiffs bringing claims under a federal statute, however, must still satisfy the requirements for federal civil jurisdiction. If brought under the section 1332 diversity provision, the controversy must involve citizens of different states and the amount in controversy must exceed $10,000.\textsuperscript{37} If brought under the section 1331 federal question provision,\textsuperscript{38} the controversy must arise under a federal statute granting civil jurisdiction. The constitutional authority to hear these cases is also granted by article III of the Constitution.\textsuperscript{39} The statutory authority for civil jurisdiction over diversity cases is found in section 1332 of title 28,\textsuperscript{40} and the statutory authority for federal question cases in various other provisions of title 28.

One problem created by having these three jurisdictional choices available occurs when maritime plaintiffs begin combining the section 1331 (federal question), section 1332 (diversity) and section 1333 (admiralty) causes of action together against diverse and non-diverse defendants.\textsuperscript{41} In deciding who will be the

\textit{Id.} at 664.

\textsuperscript{33} Regardless of the court in which the action is brought, the federal substantive admiralty or maritime law applies if the claim is one cognizable in admiralty. See \textit{Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd.}, 369 U.S. 355 (1962).

\textsuperscript{34} See \textit{The Max Morris}, 137 U.S. 1 (1890); \textit{Pope & Talbot, Inc. v. Hawn}, 346 U.S. 406, 431 (1953).

\textsuperscript{35} See \textit{Chelentis v. Luckenback S.S. Co.}, 247 U.S. 372, 384 (1918) (holding that in the field of maritime law, a reverse-\textit{Erie} approach is applicable).

\textsuperscript{36} See \textit{Smith v. Fiber Controls Corp.}, 300 N.C. 669, 268 S.E.2d 504 (1980).

\textsuperscript{37} See supra note 15.

\textsuperscript{38} See supra note 14.

\textsuperscript{39} "The judicial Power shall extend to all Cases, in Law . . . arising under . . . the Laws of the United States; to Controversies between . . . Citizens of different States." \textit{U.S. Const.} art. III, § 2.

\textsuperscript{40} See supra note 15.

factfinder, the court is then forced to choose between ordering all issues to be heard by the court,\(^\text{(42)}\) separating the different issues between the court and jury along jurisdictional lines, or ordering all issues to be heard by the jury.\(^\text{(43)}\) This possibility of bringing combined actions resulted when the Supreme Court unified the rules governing admiralty procedure with the Federal Rules of Civil Procedure in 1966.\(^\text{(44)}\) Prior to this unification, there were separate admiralty and law dockets, and a district court sitting in admiralty could not hear a separate legal claim, nor could a court on the law side hear a separate admiralty claim.\(^\text{(45)}\) The district court now has one docket and can hear any separate claim or combination of claims over which the court has jurisdiction. The Rules also contain numerous provisions which accommodate bringing combined actions involving admiralty, diversity and federal question claims. Analyzing the details of those provisions, however, is beyond the scope of this Note.\(^\text{(46)}\)

B. *Navigable Waters and Tidal Boundaries*

When Congress passed the Judiciary Act of 1789, section 9 of the Act conferred maritime jurisdiction upon the federal courts.\(^\text{(47)}\) This jurisdiction drew its origins, however, from those pre-1789 maritime principles employed by the early English courts. Thus, "'[t]he place absolutely subject to the jurisdiction of the admiralty, is the sea, which seemeth to comprehend publick rivers, fresh waters, creekes, and surrounded places whatsoever within the ebbing and flowing of the sea at the highest water.'"\(^\text{(48)}\)

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43. The district court in *Hassinger*, faced with such a predicament, held that the claims presented were so interrelated that trial by a single factfinder was required; and further, that the "constitutionally protected right to a jury trial for civil claims outweighs the tradition of non-jury trials in admiralty." *Hassinger*, 627 F. Supp. at 75-76.
44. *Fed. R. Civ. P. 1.*
46. For a detailed listing of these changes, see 7A J. Moore, A. Pelaez, *Moore's Federal Practice* 351-73 (1983). Examples of these provisions include *Fed. R. Civ. P.* 9(h), 14(e), 38(e), 39(c), 42 and 82. *Id.*
47. "[T]he district courts . . . shall . . . have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction . . . saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it . . . ." The Judiciary Act of 1789, ch. 20 § 9, 1 Stat. 73, 76-77.
guished commentator suggests that definitions such as these reflected the successful effort of the law courts in England to confine the maritime jurisdiction. The result in this country was that colonial commissions and patents granting maritime jurisdiction contemplated all "places overflowed whatsoever, within the ebbing and flowing of the sea, or high water mark."\(^{49}\)

The Supreme Court in the early 1800's found this definition of the maritime jurisdiction acceptable for the country's needs. In \textit{The Steamboat Thomas Jefferson},\(^{50}\) involving a claim for wages earned on a round-trip voyage from Shippingport, Kentucky along the Missouri River, the Court accepted the English definition by holding that navigation on the Missouri River was not within the maritime jurisdiction because that river was not tidal.\(^{51}\) The Court also stated that "[w]hether, under the power to regulate commerce between the States, Congress may not extend the remedy, by the summary process of the Admiralty, to the case of voyages on the western waters, it is unnecessary for us to consider."\(^{52}\)

As the young nation began to move westward and settlements along the Great Lakes and the major rivers prospered, a change in the maritime jurisdiction was inevitable. By 1845 Congress had extended the maritime jurisdiction of the federal courts to the non-tidal Great Lakes.\(^{53}\) It was in \textit{The Propeller Genesee Chief v. Fitzhugh},\(^{54}\) which involved a ship collision on Lake Ontario, that the Supreme Court relied on section 9 of the Judiciary Act of 1789 to redefine the extent of the maritime jurisdiction. The Court held that the maritime jurisdiction should not depend solely on whether the waters were tidal; rather, the "navigable character of the water" should be controlling.\(^{55}\) "If the water was navigable it was deemed to be public; and if public . . . [it should be] regarded as within the legitimate scope of the . . . [maritime] jurisdiction conferred by the Constitution."\(^{56}\)

The Court's next step in defining the extent of maritime jurisdiction to our nation's navigable waters came in \textit{The Steamer WORKS, 2d ed. at 226}).

\(^{50}\) 23 U.S. (10 Wheat.) 428 (1825).
\(^{51}\) \textit{Id.} at 429.
\(^{52}\) \textit{Id.} at 430.
\(^{53}\) Act of February 26, 1845, 5 Stat. 726 (1845).
\(^{54}\) 53 U.S. (12 How.) 443 (1851).
\(^{55}\) \textit{Id.} at 457.
\(^{56}\) \textit{Id.}
The case involved a claim by the government to recover penalty fees from the steamship Daniel Ball for its failure to acquire the necessary inspection and license required by the Act of August 30, 1852. That Act required all steam-powered passenger vessels operating on the "navigable waters of the United States" to meet certain licensing requirements before operating for hire. The owners of the Daniel Ball asserted that she was engaged only in carrying passengers between the cities of Grand Rapids and Grand Haven, Michigan along the Grand River, and that the river was not "navigable waters." The owners, therefore, argued that they were not subject to the licensing requirements of the Act. The Court disagreed, stating that because

the ebb and flow of the tide do not constitute the usual test, as in England, as to the navigability of waters ..., [a] different test must, therefore, be applied to determine the navigability of our rivers. ... Those rivers must be regarded as public navigable rivers ... which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used ... as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

The end result today of this evolution in defining the navigable waters is this: navigable waters include nontidal waters which were navigable in the past or which could be made navigable in fact by reasonable improvements, and tidal waters within the ebb and flow of the tide, with no showing of actual or potential navigability required. The maritime jurisdiction in tidal waters, however, has not been interpreted as meaning that the jurisdiction recedes with the low tide and expands with the high tide. Because the range of the tide at any given place varies from day to day,

57. 77 U.S. (10 Wall.) 557 (1871).
58. 10 Stat. 61 (1852).
59. The Daniel Ball, 77 U.S. (10 Wall.) at 566.
60. Id. at 559, 561.
61. Id. at 563.
62. Id. at 557.
63. Leslie Salt Co. v. Froehlke, 578 F.2d 742, 749 (9th Cir. 1978).
64. Every 24.8 hours, the Atlantic coast experiences two complete tidal cycles, each including a high and low tide. Because the difference between the two daily tidal cycles, known as semi-diurnal tides, is relatively slight, in most instances there is little difference between the two high tides or between the two low tides on a given day. Id. at 746.
the MHW-Mark has traditionally been the limit of maritime jurisdiction in tidal waters.65 The Supreme Court repeated this ruling on the boundary of navigable waters in tidal areas in Willink v. United States,66 an eminent domain case involving a wharf owner whose property bordered on the Savannah River.67 The Court ruled that the plaintiff was not entitled to compensation for any damage to his marine railway that was below the MHW-Mark and within the Savannah harbor lines.68 The Court held that because the Savannah River was "navigable and tidal, whatever rights [plaintiff] possessed in the land below the mean high water [mark] were subordinate to the public right of navigation and to the power of Congress to employ all appropriate means to keep the river open and its navigation unobstructed."69

The final step in defining the limits of maritime jurisdiction in tidal areas came in Borax Consolidated, Ltd. v. Los Angeles,70 where the Court adopted a scientific procedure for determining the MHW-Mark.71 At issue in Borax was the proper boundary between tidelands as to which California possessed original title upon admission to the Union, and uplands, which became public lands of the United States at the time of their acquisition from Mexico.72 The specific question before the Court was whether this boundary line was the MHW-Mark or the "neap tide" line.73

After reviewing arguments of an English court which had preserved to the English property owners so much of the land as was "dry and maniorable",74 the Borax Court held that the tidelands extended to the MHW-Mark as technically defined by the United States Coastal and Geodetic Survey.75 That survey defined the MHW-Mark as that boundary line which is determined by the "average height of all the high waters at a given place over a period of 18.6 years."76

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67. Id.
68. Id. at 579.
69. Id. at 580.
70. 296 U.S. 10 (1935).
71. Id. at 27.
72. Id. at 15-22.
73. Id. at 21-22; "Neap tide" as used in this context refers to the mean low water mark of the tides.
74. Id. at 22-24.
75. Id. at 26-27.
76. Id.
It is important to understand, however, that *Borax* discusses two basic concepts: the mean high water (MHW) and the mean high water mark (MHW-Mark). The MHW defined by *Borax* does not mean a "physical mark made upon the ground by the waters: it means the [average horizontal] line of high water as determined by the course of the tides [over an 18.6 year period]." To calculate this MHW requires that each day for 18.6 years the "height of high water above sea level" be recorded and then the arithmetic mean of the water level can be determined at the end of this 18.6 year period. Once this MHW height is determined, then the MHW-Mark can be established. The MHW-Mark is established by finding the intersection of the land with the water surface at the elevation of the MHW. It is this MHW-Mark which is the boundary in tidal areas of the navigable waters for the purpose of maritime jurisdiction. In the years following *Borax*, a case involving a

77. Using the word "horizontal" is not technically correct because of the curvature of the earth and the resulting slight curvature of the waters thereon. For the purposes of explaining the MHW and MHW-Mark, however, it will be helpful to visualize a "horizontal" plane on the surface of the water.

78. *Borax*, 296 U.S. at 22-23.

79. **National Oceanic and Atmospheric Administration, Tidetables 1986, East Coast of North and South America Including Greenland (Issued May 1985)** (hereinafter NOAA TIDETABLES) 267-68. The National Oceanic and Atmospheric Administration (NOAA) is an administrative agency of the U.S. Department of Commerce. A main responsibility for the NOAA is gathering data from approximately 2000 tide-measuring stations along the Eastern shoreline of North and South America to calculate tidetables for maritime and other concerns. Water height data from these stations is collated and used to construct tidetables for the entire Eastern seaboard of the Atlantic Ocean. In the NOAA TIDETABLES publication, listings for over fifty coastal measuring stations along North Carolina's shoreline are included, with information provided on tidal height differences, tide times and mean tide levels for each station. NOAA TIDETABLES at 221.

80. NOAA TIDETABLES at 267-68.

81. *Id.* at 268. To calculate the MHW-Mark does not require, nor does it mean, that someone locate over an 18.6 year period the boundary on the shoreline where the average high tide has reached. If this were the case, something like the following would be required to get a precise measurement. Assume a 200-foot stretch of beach from the edge of a sand dune to the edge of the water at low tide. Everyday for 18.6 years, a statistician would wait and place a marker in the sand at the point where the tide had reached its peak (high tide). Then, at the end of the 18.6 year period, he would find the average location of all the stakes and a mean high tide line could be established. This is not the proper way, however, to measure the MHW-Mark as dictated in *Borax*. The proper way is that which is described *supra* in notes 77-82 and accompanying text.

82. City of Los Angeles v. Borax Consolidated, Ltd., 74 F.2d 901 (9th Cir.),
land title-dispute, the terms tide water and navigable water have become interchangeable to the extent that today the MHW-Mark is consistently accepted as the boundary in tidal areas of the "navigable waters [and maritime jurisdiction in] the United States."^83

C. Maritime Jurisdiction For Tort Claims

1. Situs

Historically, whether the federal courts could exercise their maritime jurisdiction in tort claims depended on where the tort occurred.^64 As early as 1813, the federal courts were holding that "[i]n regard to torts... the jurisdiction of the admiralty is exclusively dependent upon the locality [or situs] of the act; that is, such as are committed on the high seas, or on waters within the ebb and flow of the tide."^85 But as the definition of navigable waters expanded to include not only tidal waters but those nontidal waters that were navigable in fact,^86 the situs for tort jurisdiction in maritime law also expanded. "Every species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters [was now] of admiralty cognizance", and maritime law governed.^87

This strict situs test worked well in the 1800's, but as the commercial sophistication of the nation developed, the test began showing its inadequacy. The test suffered from a tendency to create inconsistent results in cases otherwise analogous. For instance, a longshoreman who was standing on a vessel and was then knocked onto the wharf had remedies in a federal court applying maritime law;^88 whereas a longshoreman knocked from a wharf into the water by a sling being lowered from a vessel was denied remedies under maritime law.^89 The federal courts and Congress were regularly being called on to make exceptions to the situs test "when the tort ha[d] no maritime locality, but [did] bear a rela-

aff'd, Borax Consolidated, Ltd. v. City of Los Angeles, 296 U.S. 10 (1935).
83. Leslie Salt Co. v. Froehlke, 578 F.2d 742, 750 (9th Cir. 1978).
84. The Plymouth, 70 U.S. (3 Wall.) 20, 35-36 (1865).
85. Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249, 253 (1972) (citing Thomas v. Lane, 23 F. Cas. 957, 960 (CC Me. 1813) (No. 13,902)).
86. The Daniel Ball, 77 U.S. (10 Wall.) 557, 563 (1870). See supra notes 53-64 and accompanying text.
tionship to maritime service, commerce, or navigation." These exceptions included injuries to seamen on land, injuries to longshoremen and harbor workers on land, and injuries to persons or damages to property caused by vessels on navigable waters. For some commentators, all this attention to borderline problems was not the real concern of admiralty. The Supreme Court thought otherwise, because these borderline situations highlighted some of the problems with this strict situs test for maritime jurisdiction over torts.

2. Nexus

Executive Jet Aviation, Inc. v. City of Cleveland gave the Supreme Court an opportunity to redefine the situs test. In Executive Jet, the plaintiff's plane lost power after ingesting seagulls into its engines while taking off from the defendant's airport, causing the plane to crash and sink in Lake Erie. Plaintiff sued under section 1333's admiralty provision, alleging that defendant was negligent in failing to keep its runway free of seagulls or to warn of their presence. Faced with the broader question of whether situs alone was sufficient to create maritime tort jurisdiction, the Court pointed out that "reliance on the relationship of the wrong to traditional maritime activity is often more sensible and more con-

90. Executive Jet, 409 U.S. at 259.
92. See Gutierrez v. Waterman Steamship Corp., 373 U.S. 206 (1963) (court allowed the extension of the doctrine of unseaworthiness to cover injuries sustained on land by a seaman or a longshoreman). See also Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq., which was amended in 1972 to cover employees working on those areas of the shore customarily used in loading, unloading, repairing, or building a vessel. Pub. L. No. 92-576, § 2, 86 Stat. 1251 (1972).
94. "The important cases in admiralty are not the borderline cases on jurisdiction . . . . [T]he main business of the [admiralty] court involves claims for cargo damage, collision, seamen's injuries and the like—all well and comfortably within the circle, and far from the penumbra." See G. Gilmore & C. Black, The Law of Admiralty 26 n.88 (2d ed. 1975) (emphasis in original).
95. 409 U.S. 249 (1972).
96. See supra note 12.
97. 409 U.S. at 250-51.
sonant with the purposes of maritime law than is a purely mechanical application of the [situs] test."\textsuperscript{98} The Court held that "[i]t 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."\textsuperscript{99} After the \textit{Executive Jet} ruling, the test to establish maritime jurisdiction for an aviation tort claim required that the situs be within navigable waters, \textit{and} that the wrong bear a significant relationship to traditional maritime activity, or nexus.\textsuperscript{100}

The next step for the Supreme Court would be to extend to all tort claims the \textit{Executive Jet} requirements of situs and nexus. In \textit{Kelly v. Smith},\textsuperscript{101} the Fifth Circuit, relying on \textit{Executive Jet}, took the initiative by holding that any tort claim brought within the maritime jurisdiction of the federal court must satisfy the situs and nexus requirements. \textit{Kelly v. Smith} arose from a mini ship-to-shore gun battle in the Mississippi River. The vessel, no ship of the line, \textit{was} a 15-foot outboard boat. The combatants \textit{were} irregular forces, fleeing deer poachers afloat[\textsuperscript{103}] and outraged defenders of a private hunting preserve ashore.[\textsuperscript{103}] The armament, rather than coastal batteries and car-ronades on the gun deck, consist[ed] of hunting rifles.\textsuperscript{104}

Finding that the plaintiffs could assert section 1333's admiralty jurisdiction, the court held that \textit{Executive Jet}'s nexus test required the consideration of four distinct factors. These factors were "[t]he functions and roles of the parties; the types of vehicles and instrumentalities involved; the causation and the type of injury; and traditional concepts of the role of admiralty law."\textsuperscript{105}

The \textit{Kelly v. Smith} holding is significant because it prompted the Supreme Court in \textit{Foremost Insurance Co. v. Richardson}\textsuperscript{106} to agree that \textit{Executive Jet}'s tort claim criteria of situs and nexus should apply outside of the context of aviation torts. The end result of this evolution of maritime jurisdiction over tort claims to-

\begin{itemize}
  \item \textsuperscript{98} \textit{Id.} at 261.
  \item \textsuperscript{99} \textit{Id.} at 268.
  \item \textsuperscript{100} \textit{Id.}
  \item \textsuperscript{101} 485 F.2d 520 (5th Cir. 1973).
  \item \textsuperscript{102} The plaintiffs in \textit{Kelly}.
  \item \textsuperscript{103} The defendants in \textit{Kelly}.
  \item \textsuperscript{104} \textit{Kelly}, 485 F.2d at 521.
  \item \textsuperscript{105} \textit{Id.} at 525.
  \item \textsuperscript{106} 457 U.S. 668 (1982). \textit{See infra} notes 111-16 and accompanying text for a discussion of \textit{Foremost}.
\end{itemize}
day is that most tort claims, in the absence of legislation to the contrary, must satisfy both requirements of situs and nexus.

D. Maritime Jurisdiction Now Encompasses Pleasure Vessels

When the Constitutional Convention's members were creating the constitutional and statutory authority for our maritime courts, their main concern was to protect the country's "domestic shipping industry."107 These members were following the path of governments in other lands which had also created maritime courts to administer to the "necessities of commerce."108 This "business of river, lake, and ocean shipping call[ed] for supervision by a tribunal enjoying a particular expertness in regard to the more complicated concerns of that business."109 Today this philosophy, that the maritime courts function solely to tend to the needs of commercial users and their vessels, is inadequate because our navigable waters carry more than just commercial vessels. In 1980, sharing the navigable waters with those commercial vessels were over 10 million pleasure vessels.110 It was the pleasure vessel operators that the Supreme Court sought to regulate and protect in *Foremost Insurance Company v. Richardson*.111

*Foremost* involved the collision of two pleasure vessels on the Amite River in Louisiana, which resulted in the death of a passenger named Clyde Richardson.112 The wife and children of Richardson brought an action in federal court under section 1333's admiralty provision, claiming that the negligence of the other vessel's operator caused the collision which resulted in Richardson's death. At issue on appeal was whether the plaintiffs, in addition to showing situs and nexus, were required to show that the vessel had a relationship with commercial maritime activity, or status.113 The

107. See supra notes 23-24 and accompanying text.
110. There were 14.3 million pleasure vessels in the United States in 1980. *U.S. Coast Guard, U.S. Dep't of Transp., Boating Statistics—1980* 8 (1981). This author makes the conservative assumption here that approximately two-thirds of the pleasure vessels were being operated on the navigable waters of the United States.
112. *Id.* at 669.
113. *Id.* at 674.
Court held that

[although the primary focus of admiralty jurisdiction is unquestionably the protection of maritime commerce, . . . [t]he federal interest in protecting maritime commerce cannot be adequately served if admiralty jurisdiction is restricted to those individuals actually engaged in commercial maritime activity. This interest can be fully vindicated only if all operators of vessels on navigable waters are subject to uniform rules of conduct. 114

It is not surprising that the Court took this direction, as in three earlier cases the Court had treated pleasure boats as being within the maritime jurisdiction without suggesting any doubt about the matter. 115 Considering the increasing number of pleasure boats crowding our navigable waterways today, undoubtedly “[t]he potential[ly] disruptive impact of a collision between . . . two pleasure boats on navigable waters [would have] a significant relationship with maritime commerce.” 116

ANALYSIS

A. Reliance on Inappropriate Precedent

The location of the Hassinger sailboat in relation to the MHW-Mark was of critical importance because in order to invoke the maritime jurisdiction of the federal court the proper situs and nexus were required. 117 The Fourth Circuit in Hassinger 118 devoted considerable time to the issue of whether a vessel is required to be actually in the water to come within the boundary of navigable water and thereby satisfy the situs requirement for maritime jurisdiction. At the outset the court stated that “[t]he situs requirement is satisfied if the boat or ship is partly in or over the water.” 119 It supported this statement by citing Blanchard v. American Commercial Barge Line Co. 120 Whereas the result reached by the Fourth Circuit—a finding of maritime jurisdiction—was correct, a close reading of Blanchard reveals that it was an inappropriate precedent for supporting the Hassinger holding.

114. Id. at 674-75 (emphasis in original).
119. Hassinger, 781 F.2d at 1024.
Blanchard involved a claim for personal injuries and property damage to a plaintiff and his fourteen-foot aluminum boat caused when a tug and its tow of three barges ran aground near the Intracoastal Canal in Louisiana. The plaintiff had been searching in a canal that paralleled the Intracoastal Canal for logs with which to build a pier for himself.121 After finding a suitable log, the plaintiff "beached his boat and proceeded to cut the log."122 It was while cutting this log that "[t]he lead barge went about 100 to 150 feet up on the bank, and in doing so struck plaintiff's boat,"123 damaging the boat and causing injury to the plaintiff.

When this accident occurred, however, the Blanchard court gave no indication as to whether (a) the boat was partly in the water, (b) the boat was out of the water but below the MHW-Mark, (c) part of the boat was below the MHW-Mark and the other part above it, or (d) the entire boat was above the MHW-Mark and on dry ground. Much of the discussion in Blanchard centers on plaintiff's pain and suffering as being caused by a pre-existing back injury,124 and not on the issue of situs for maritime jurisdiction. The court in Blanchard failed to give any legal analysis or precedent for its finding of maritime jurisdiction pursuant to section 1333's admiralty provision, or its finding of maritime jurisdiction pursuant to the Admiralty Jurisdiction Extension Act.125 Because the Admiralty Jurisdiction Extension Act covers those injuries on land "caused by a vessel on navigable water, notwithstanding that such . . . injury be . . . consummated on land,"126 the logical conclusion of the court's opinion would be that plaintiff was completely above the MHW-Mark at the time of the accident.

When the electrocutions in Hassinger occurred as the three men were attempting to beach Hassinger's sailboat, the evidence cited by the court supported the finding that the sailboat was below the MHW-Mark at the time of the accident.127 Despite the fact

121. Id. at 921.
122. Id.
123. Id.
124. Id. at 922.
125. Id. at 923; see also supra note 13 for pertinent portions of the Act.
126. See supra note 13.
127. The court noted that evidence stating that the sailboat was at least partially in the water when the accident occurred was confirmed by at least sixteen witnesses; whereas, evidence stating that the sailboat was not in the water, but on dry ground, was confirmed by at least four witnesses. Hassinger, 781 F.2d at 1024-25.
that the sailboat may not have been completely in the water when the mast contacted the power line, because the boat was below the MHW-Mark, the situs required for maritime jurisdiction was satisfied.\(^{128}\) This basic principle of maritime jurisdiction stated by the \textit{Hassinger} court, standing alone, was sufficient for the finding of situs. The \textit{Blanchard} opinion does not support this holding reached by the \textit{Hassinger} court in its decision, and therefore was inappropriately cited by the court.

\textbf{B. Common Sense and Nonsense Stand Face to Face in the Fourth Circuit}

Another peculiar aspect of the decision in \textit{Hassinger} arises when comparing that decision with the holding in \textit{Hastings v. Mann},\(^ {129}\) an earlier Fourth Circuit decision. The \textit{Hassinger} court cited \textit{Hastings} as support for finding the necessary situs of the decedents, stating that "[w]hether, at the time the injury was sustained, [libellant] . . . was landward or seaward of the actual edge of the water, his rights should be the same, and they should be determinable in the same court."\(^ {130}\)

In \textit{Hastings}, the plaintiff fell and was injured in the waters of Pamlico Sound, North Carolina while launching his vessel from a boat launching ramp.\(^ {131}\) The boat ramp itself extended from "a point some distance above high water to a point well below low water. No portion of it was afloat, for the underwater portion of the launching ramp was securely fastened to the bottom."\(^ {132}\) Following the accident, plaintiff asserted against the marina owner a claim in federal court pursuant to section 1333's admiralty provision.\(^ {133}\) Despite the fact that plaintiff was standing in the water when the accident occurred, the court refused to recognize plaintiff's claim as within maritime jurisdiction. The court held that the boat ramp, like a pier or a wharf, was an extension of the land,\(^ {134}\)

\begin{itemize}
  \item 128. \textit{Id.} at 1025, 1027.
  \item 129. 340 F.2d 910 (4th Cir. 1965).
  \item 130. \textit{Hassinger}, 781 F.2d at 1026-27 (citing \textit{Hastings}, 340 F.2d at 912).
  \item 131. The phrase 'boat launching ramp' will hereinafter be referred to simply as 'boat ramp'.
  \item 132. \textit{Hastings}, 340 F.2d at 911.
  \item 133. \textit{Id.}
  \item 134. \textit{Id.} at 912. The extension of the land doctrine, as cited in \textit{Hastings}, prevents recovery within the federal courts' maritime jurisdiction for damages to piers, wharfs and similar structures extending over navigable waters, and prevents recovery for injuries suffered by persons while upon such structures unless caused
\end{itemize}
and therefore any injury occurring on the boat ramp was not within maritime jurisdiction. 135

The Hastings court, using for support what it considered as "the most closely analogous case", 136 relied on an 1885 case entitled The Professor Morse 137 to reach the conclusion that the boat ramp was an extension of the land. The Professor Morse, however, involved an in rem 138 action by the owner of a marine railway for damages caused to the railway itself, which extended 700 feet into the waters of New York harbor. The crew of the Professor Morse (a steamship) had run a mooring line from the steamship to a buoy in the harbor channel. The buoy itself was attached to an anchor which held the buoy in its proper location. As the steamship drifted that evening from its mooring, the buoy's anchor dragged across the railway and caused the railway extensive damage. 139 The Professor Morse court held that because the railway could not be considered "a craft or vessel intended to float on the water . . ., [t]he upper [and lower] end[s] . . . [being] securely fastened to the land", the "offense was committed and consummated" on the land and maritime jurisdiction would not apply. 140

The district court in Hastings took this reasoning and used it to hold that a boat ramp, being constructed of "creosoted lumber lying [firmly attached] on the ground of the [marina owner's] property", 141 was an extension of the land, and any accidents or injuries occurring thereon were not cognizable in maritime jurisdiction. The court created a fiction which holds that injuries that occur while on a boat ramp, even if the injury occurs while the person is physically in the water, will be considered to have occurred on land. 142 If the injury to the person on the boat ramp was caused by a vessel on navigable waters, however, the injured person can assert maritime jurisdiction under the Admiralty Jurisdiction Ex-

by a vessel on navigable waters. Id.

135. Id.
136. Id.
137. 23 F. 803 (D.C.N.J. 1885).
138. In rem is a "technical term used to designate proceedings or actions instituted against the thing, in contradistinction to personal actions, which are said to be in personam." BLACK'S LAW DICTIONARY 713 (5th ed. 1979) (emphasis in original).
139. 23 F. at 806.
140. Id. at 804, 806.
142. Hastings, 340 F.2d at 912.
If *Hastings* is still good law in the Fourth Circuit after the *Hassinger* decision, then applying the situs and nexus tests for satisfying maritime jurisdiction to someone who is injured while launching a vessel at a boat ramp could create anomalous jurisdictional findings. In *Hastings*, the plaintiff on the boat ramp was actually *in* the water, but was precluded from asserting maritime jurisdiction because situs was lacking. In *Hassinger*, however, the three decedents beaching the *Hobie Cat* sailboat could have been completely *out* of the water, and still have asserted maritime jurisdiction because they were below the MHW-Mark. The following hypothetical illustrates a problem associated with having both *Hassinger* and *Hastings* co-existing as controlling law in the Fourth Circuit.

C. **Beaching and Launching a Vessel as Within Maritime Jurisdiction**

1. **Hypothetical A**

Assume that at the exact location where the decedents in *Hassinger* were beaching their *Hobie Cat* sailboat, there was a boat ramp exactly like the one in *Hastings*. Assume a situation similar to that actually occurring in *Hassinger*—the three decedents decide to use the boat ramp for pulling the sailboat out of the water. Assume also that it is low tide and the sailboat is on the ramp and completely *out* of the water, though seaward of the MHW-Mark. Following the holding in *Hastings*, when the sailboat’s mast contacts the power line and the three men are electrocuted, their administrators would be unable to assert maritime jurisdiction because the injury occurred on “an extension of the land.” The decedents’ rights would be the same as those of an individual “upon a pier, who, when injured, is well seaward of both high and low water.” But remove the boat ramp from the hypothetical and you have the holding in *Hassinger*, where the administrators

143. *Id.*
144. The following analysis in the text would be applicable to launching a vessel from a boat ramp into navigable water, and also to hauling out that same vessel from the water by using the convenience of a boat ramp.
146. *Hassinger*, 781 F.2d at 1025.
147. *Hastings*, 340 F.2d at 912.
148. *Id.*
could assert maritime jurisdiction for the three men electrocuted.\textsuperscript{149}

2. Why Launching a Vessel Should Satisfy the Nexus for Maritime Jurisdiction

Despite reluctance by some jurists and commentators to accept that pleasure vessels should be included within the maritime jurisdiction of the federal courts,\textsuperscript{150} the Foremost decision created the foundation for allowing them to be included if the proper situs and nexus requirements were satisfied.\textsuperscript{151} The Hassinger decision now supplies the element of jurisdiction necessary for those situations in which a pleasure vessel is hauled out of the water (i.e. beaching a vessel). The Hassinger court quoted the district court by saying that “[t]he role of the decedents at the time of the accident was that of a sailor attempting to remove a vessel from navigation; . . . [such] activity . . . [is] considered as having a significant relationship to traditional maritime activity within the meaning of Executive Jet.”\textsuperscript{152}

The logical conclusion derived from this statement is the following: if maritime jurisdiction is present when pulling a vessel out of the water, assuming the situs requirement is met, then maritime jurisdiction should be present when launching a vessel into the water, again assuming the situs requirement is met. For many people in earlier eras of our civilization, whose vocation and livelihood came from fishing the oceans and seas in small vessels, it was necessary after a day’s work to pull their vessels up onto the beach and beyond the reach of the tides. This “beaching of a vessel” was done by muscling the boat up along the beach as far as possible. “This act [was] an ancient and practical solution to the problem of removing the [vessel] from the reach of the tides.”\textsuperscript{153} And when the next day dawned and another day of fishing was at hand, launching the vessel was accomplished by muscling the boat down along the beach and back into the water. Such was true in days long

\textsuperscript{149} Hassinger, 781 F.2d 1022.
\textsuperscript{150} See Foremost Insurance Co. v. Richardson, 457 U.S. 668, 677 (1982) (Powell, J., dissenting), see also Swaim, Yes, Virginia, There is an Admiralty: The Rodrique Case, 16 LOYOLA L. REV. 43 (1970) ("Maritime commerce—and nothing more—is the raison d’etre for the courts and rules of admiralty". Id. at 44.)
\textsuperscript{151} See supra notes 107-16 and accompanying text.
\textsuperscript{152} Hassinger, 781 F.2d at 1027 (quoting Hassinger, 627 F. Supp. at 71-72).
\textsuperscript{153} Hassinger, 627 F. Supp. at 71.
past, and remains true even today for some fishermen. Applying the four-prong test for nexus under *Kelly v. Smith* and *Hassinger* to pleasure vessels, this launching of a vessel should satisfy the elements required for nexus in the same manner as beaching that same vessel.\(^{154}\)

As applied to the *Hassinger* holding, it should follow that had the three men been pulling the Hobie Cat down towards the water during the low tide, and the sailboat’s mast had then struck the power line which extended over an area seaward of the MHW-Mark, maritime jurisdiction would have been present. The main question regarding the *Hastings* decision in light of the holdings in *Executive Jet*, *Foremost* and *Hassinger*, is why the criteria of satisfying maritime jurisdiction while launching a pleasure vessel should be any different because an owner launches his vessel by using a boat ramp. For those thousands of North Carolinians who annually enjoy the convenience of launching their pleasure vessels at boat ramps located along North Carolina’s twenty-five coastal counties,\(^{155}\) the *Hastings* holding creates unnecessary jurisdictional problems.

To illustrate the problems caused by continuing to rely on the *Hastings* decision, consider the routine that many pleasure vessel owners follow when launching their vessels at a boat ramp. The vessel is pulled on land by a boat trailer, which in turn is transported along the highway by an automobile. The trailer itself has a winch, located on the front of the trailer, that contains a rope or steel cable that is usually connected to a large eyelet on the bow of the vessel. Connecting this cable to the vessel, and removing the slack, keeps the vessel properly pulled up onto the trailer. Three or four canvas straps are wrapped around the vessel to keep it firmly secured to the trailer while it is transported along the highway, or

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154. Under this four-prong text stated by the *Kelly v. Smith* court (see supra notes 101-05 and accompanying text), the role of the boaters would be that of pleasure boating enthusiasts attempting to launch a vessel into navigable waters; the types of vehicles and instrumentalities involved would be pleasure vessels and their accompanying equipment and rigging; the causation and type of injuries (see *infra* note 159 for examples of accidents that could possibly occur) would probably center around negligence and products liability accidents; the traditional concepts of the role of admiralty would be those that involve all boating concerns, commercial and pleasure—that of physically placing the vessel into the water.

155. These counties are Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Currituck, Dare, Gates, Halifax, Hertford, Hyde, Martin, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.
while the trailer is being backed onto the boat ramp. In actually launching the vessel, the trailer, with vessel attached, is backed down onto the boat ramp and into the water. Oftentimes, the incline of the boat ramp is steeper than the natural slope of the shore. This allows the trailer to become partially submerged in the water more quickly than if the boat ramp followed the natural slope of the shore. While the trailer is being backed into the water, a member of the boating party is usually ankle-deep to waist-deep in the water to assist in launching the vessel. Oftentimes, another member of the boating party will be in the vessel, manning the controls to maneuver the vessel outside of the launching area once it is released from the trailer. If the canvas straps have not yet been released from the vessel, they are now released by the person standing in the water. The tension of the trailer's winch cable is then released, and the vessel is now afloat on the water, though it remains attached to the winch cable and, possibly, the canvas straps.

The problem created by Hastings lies in deciding when the vessel is in the water for the purpose of satisfying situs. For instance, in the above scenario of launching the vessel, Hastings says that when the person on the boat ramp is waist-deep in water releasing the canvas strapping, or is ankle-deep in water releasing the tauntness of the trailer’s winch cable, he is technically on dry land for situs purposes. Likewise the trailer carrying the vessel, even when the trailer is partially submerged, is technically on dry land for situs purposes. But when is the vessel itself considered as being “on navigable waters”, thereby satisfying the situs requirement for maritime jurisdiction, and when, under the Hastings ruling, is the vessel still considered to be technically on land, despite being actually in the water? Does the vessel have to be completely free of the restraints of the trailer to be “on navigable waters”, or would being partially free of the trailer meet the requirement for being “on navigable waters” for situs purposes? The Hastings decision fails to answer either of these questions. If being completely free of the trailer is the test for finding situs under Hastings and Hassinger, consider the following hypotheticals.

156. Hastings, 340 F.2d at 912.
157. See supra notes 47-83 and accompanying text for a discussion of navigable waters in the context of maritime jurisdiction.
3. Hypothetical B

Assume that a boating enthusiast meets the four-prong test for nexus under *Kelly v. Smith* and *Hassinger* when launching his vessel on a boat ramp. He is standing in the water on the boat ramp below the MHW-Mark, is releasing the canvas strapping and is slackening the trailer's winch cable. A friend is on board the vessel manning the controls when an accident occurs that injures one or both of the men.

If having the vessel completely free of the trailer is the test for finding situs, then the two injured boaters in the above hypothetical would be precluded from asserting maritime jurisdiction under section 1333's admiralty provision, or under the Admiralty Jurisdiction Extension Act. The reason is that both the man in the water and the vessel, which is in the water being launched, are considered under the *Hastings* ruling to be on an extension of the land where maritime jurisdiction does not apply. The boaters' only chance for asserting maritime tort jurisdiction would be if another vessel on navigable waters injured them, in which case the Admiralty Jurisdiction Extension Act would supply the jurisdiction.

In effect, if the extension of the land doctrine precludes their bringing a maritime action, the rights and liabilities of the two men are the same as if the accident had taken place in their backy-

158. See supra note 154.

159. In deciding what type of accident occurs, the reader can apply to this situation any of the following scenarios which have actually resulted in state and federal civil lawsuits, and which could have occurred while launching the vessel: Degen v. Bayman, 241 N.W.2d 703 (S.D. 1976), where the design of the motorboat permitted the 210-horsepower motor to be started while the transmission was in gear and the throttle open, which resulted in injury to the plaintiff; Schedlbauer v. Chris-Craft Corp., 381 Mich. 217, 160 N.W.2d 889 (1968), where the design of the fuel pump's diaphragm resulted in the engine's explosion, (the continual wear on the diaphragm resulted in discharge of gasoline into the engine compartment); McKee v. Brunswick Corp., 354 F.2d 577 (7th Cir. 1965), where a defective coil created a short circuit that melted the insulation off an ignition wire, which ignition wire then contacted a battery wire and caused a serious explosion; Peltier v. Seabird Industries, Inc., 304 So. 2d 695 (La. Ct. App. 1974), *writ denied*, 309 So. 2d 343 (La. 1975), where the fittings on copper-tubing gaslines, installed according to the manufacturer's instructions ("finger tight"), created fuel leaks which led to a fire when a spark ignited the fumes, destroying the vessel and injuring the owner; or Kale v. Daugherty, 8 N.C. App. 417, 174 S.E.2d 846 (1970), where a 110 horsepower motor exploded then the operator attempted to start the engine without first ventilating the engine compartment.

160. See supra notes 13 and 93 and accompanying text.
ards, miles away from any beach or watercourse.

4. Hypothetical C

Now assume the exact situation in Hypothetical B, except that the two men are not launching their vessel on a boat ramp. Rather, they have decided that the shore is firm enough to allow them to back the trailer into the water without having to use a boat ramp. Hastings' extension of the land doctrine now has no application. The man in the water slackening the trailer's winch cable has satisfied situs, and the vessel, floating in the water, has also satisfied situs. With both situs and nexus now present, the accident occurs both men could assert claims within maritime jurisdiction under section 1333's admiralty provision, or under section 1332's diversity provision. Maritime law would also now apply. This application of maritime law would bring with it the possibility of applying strict liability in any products liability action, comparative negligence, and a possible limitation of liability under the Limited Liability Act of 1851.

161. As stated supra in note 154 and accompanying text, it is assumed in these hypotheticals that nexus for maritime jurisdiction would be present when launching a pleasure vessel into navigable waters.

162. Section 1332's diversity provision could be asserted if diversity of citizenship and the minimum $10,000 amount in controversy were present. See supra note 15.

163. See East River Steamship Corp. v. Transamerica Delaval, Inc., ___ U.S. ___, 106 S. Ct. 2295 (1986). In an action by charterers of four supertankers against the turbine manufacturer for alleged design and performance defects, the Court held that "a manufacturer in a commercial relationship has no duty under either a negligence or strict products-liability theory to prevent a product from injuring itself." Id. at 2302. In reaching this decision, the Court stated that "[w]e join the Courts of Appeals in recognizing products liability, including strict liability, as part of the general maritime law." Id. at 2299. See also Tisdale v. Teleflex, Inc., 612 F. Supp. 30 (D.S.C. 1985) (court held that admiralty law recognizes the doctrine of strict liability as enunciated in Restatement (Second) of Torts § 402 A (1965)).

164. See supra note 34 and accompanying text.

165. 8 Stat. 635 (1851) (current version at 46 U.S.C. §§ 181-82, 183(a), 184-88 (1970)). This Act allows the owner of any vessel to limit his liability for damage claims arising out of the operation or use of his vessel on navigable waters of the United States to the post-accident value of the vessel, if the alleged damages occurred without the "privity or knowledge" of the vessel owner. 46 U.S.C. § 183(a) (1970). The pleasure vessel owner may often escape vicarious liability where he has delegated the maintenance, use, or operation of his craft to an agent whose negligence caused the accident. This limitation of liability under the Act has been
Contrary to this, however, if the Hastings' ruling were applied in the above Hypothetical B, situs would not be present for maritime jurisdiction and North Carolina law would control. If the parties brought products liability suits the North Carolina General Statutes Chapter 99B,166 which has not been interpreted as ordinarily authorizing strict liability, now would apply.167 Contributory negligence, if present, would also apply and possibly bar any recovery for the party bringing the action.168 Finally, the possible limitation of liability available to a defendant under maritime jurisdiction would be unavailable.169

CONCLUSION

The probability of civil actions being brought for accidents occurring on boat ramps is not based on the same uncertainty that is present when calculating the chances of another Hassinger-type accident happening. Hopefully, the power utilities in North Carolina have realized the threat to public safety of placing uninsulated overhead powerlines close to navigable watercourses. The likelihood of seeing accidents occur at public and private boat launching ramps, however, is not nearly as remote as the likelihood of a Hassinger-type accident. Each year, during the warm weather months especially, thousands of boating enthusiasts in North Carolina take advantage of the convenience of using boat ramps to successfully asserted in damage suits for explosions and collisions and against claims of injury and wrongful death made by passengers and employees. See Gibboney v. Wright, 517 F.2d 1054 (5th Cir. 1975). See also Note, Pleasure-Boating and the Admiralty Jurisdiction, 10 STAN. L. REV. 724, 734 nn.82-85 (1958). See also G. Gilmore & C. Black, Jr., THE LAW OF ADMIRALTY 846 n.45 (2d ed. 1975).

166. See N.C. GEN. STAT. § 99B-1 et seq. (1979).
169. If the test for situs is being partially free of the trailer, then maritime jurisdiction would be available to both parties in Hypothetical B, regardless of whether the boat ramp was used to launch the vessel. For the accident which occurs on the boat ramp in Hypothetical B, the Admiralty Jurisdiction Extension Act would supply the necessary jurisdiction. For the accident which occurs when the boaters had backed the trailer into the water without using the boat ramp, then maritime jurisdiction would be present using the same analysis as used in Hypothetical C.
launch their small- and medium-sized vessels. Though no one intends to be involved in any accident while launching their vessel, or while cruising in the water for that matter, the statistics forecast that accidents are likely to happen.

In 1985 alone, the U.S. Coast Guard received reports nationwide on 6,237 pleasure vessel accidents which occurred on our nation’s watercourses that resulted in 1,116 fatalities,\(^{170}\) 2,757 injuries\(^{171}\) and over \$20,000,000 worth of property damage.\(^{172}\) And if the number of accounted-for accidents seems large, note that the Coast Guard estimates that it only receives reports annually on five to ten percent of all reportable accidents not involving fatalities.\(^{173}\) This means that the statistic of 6,237 pleasure vessel accidents reported is a very conservative figure for the number of accidents actually occurring each year. With these large figures, both in the number of North Carolinians who use boat ramps and the number of accidents and their resulting hardships that occur each year on the nation’s watercourses, the probability for serious accidents occurring on North Carolina’s boat ramps is substantial.

The Hassinger decision is a common sense refusal to decide the issue of situs in maritime jurisdiction on the “fortuitous state of the tide”\(^{174}\) when an accident occurs. The Hastings decision, however, holds that the issue of situs in maritime jurisdiction does depend on the fortuitous location of the injured plaintiff who is launching or beaching his vessel. Though the Fourth Circuit has questioned the soundness of Hastings at least once in the past,\(^{175}\) if Hastings today can co-exist peacefully with Hassinger in the Fourth Circuit, there is a strong message to North Carolina’s weekend sailing and power-boating enthusiasts: despite the convenience, using a boat ramp to launch or beach your vessels could seriously affect your rights and liabilities should an accident occur while you are on the boat ramp.

Paul A. Newton


\(^{171}\) Id. at 17.

\(^{172}\) Id. at 16.

\(^{173}\) Id. at 16-19.

\(^{174}\) Hassinger, 627 F. Supp. at 71.