

Because the automobiles produced by defendants were not equipped with pollution control devices, they cost less, performed better, and used less gasoline. To a resident of an area where the pollution problem is minimal, these considerations would outweigh the benefits of the devices. Retrofit ordered under section 16 would ignore these regional differences. Under the Air Quality Act of 1967¹¹² the federal government has preempted the regulation of new-car emissions in every state but California.¹¹³ The states, however, retain the power to regulate the emissions from used cars.¹¹⁴ Thus states where the pollution problem is greatest have the option of requiring pollution control devices to be installed. Such measures impose the cost of pollution control on the users of automobiles, which does not seem inappropriate, since the cost would have been borne by car users had the devices been installed in earlier years. A decision for the plaintiffs in this case would have imposed the cost on the automobile industry, which would then have passed it on to future car buyers. Any proposed solution to the automobile pollution problem involves a decision as to who will bear the cost. Congress has considered legislation that would have required automobile manufacturers to "retrofit" used cars with pollution control devices, as well as a proposal that the government subsidize the retrofit (thus distributing the cost to all taxpayers). Both proposals were rejected.¹¹⁵ It is submitted that the decisions in *Vehicle Air Pollution* were correct in leaving to the legislative branch the decision of where the burden of paying for pollution control should fall.¹¹⁶

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Environmental Law—Admiralty Law—Validity of States' Oil Pollution Sanctions—*Askew v. American Waterways Operators, Inc.*¹—Plaintiffs, merchant shippers, world shipping associations, members of the Florida coastal barge and towing industry, and owners and operators of oil terminal facilities and heavy industries located in Florida, brought suit in the United States District Court for the Middle District of Florida to enjoin application of the Florida Oil Spill Prevention and Control Act (the Florida Act).² Officials

¹¹² 42 U.S.C. §§ 1857-57I (1970).

¹¹³ 42 U.S.C. § 1857f-6A(a) (1970).

¹¹⁴ See Comment, The Clean Air Amendments of 1970: Better Automotive Ideas from Congress, 12 B.C. Ind. & Com. L. Rev. 571, 597 (1971).

¹¹⁵ Id. at 598, citing S. Rep. No. 1196, 91st Cong., 2d Sess. 13 (1970).

¹¹⁶ Under the Clean Air Amendments of 1970, Congress provided for mandatory licensing of pollution-control equipment where there is a danger that one manufacturer might achieve a monopoly because of its advancement in pollution-control technology. 42 U.S.C. § 1857h-6 (1970). Thus Congress provided an arrangement similar to the one attacked by the Justice Department in *Vehicle Air Pollution*.

¹ 411 U.S. 325 (1973).

² Fla. Stat. Ann. §§ 376.011-.21 (Supp. 1972). 355 F. Supp. 1241 (M.D. Fla. 1971); see

responsible for enforcing the Florida Act were named as defendants, and the State of Florida intervened as a party defendant asserting that its interests were much broader than those of the named defendants.³ Plaintiffs challenged the validity of the Florida Act on several federal constitutional grounds. First, plaintiffs contended that Florida sought to legislate substantively in the constitutionally mandated, exclusive federal admiralty domain.⁴ Second, plaintiffs claimed the Florida Act violated the commerce clause⁵ since the Florida Act constituted an undue burden on interstate and foreign commerce in the area of marine commerce.⁶ Finally, plaintiffs

411 U.S. at 327. The United States, the American Bar Association and the Maritime Law Association of the United States filed briefs as amici curiae urging affirmance of the district court judgment. The States of California, Georgia, Hawaii, Maryland, Massachusetts, Michigan, New York (joined by Connecticut and Delaware), North Carolina, Texas, Virginia and Washington filed briefs as amici curiae urging reversal of the district court judgment. *Id.* at 326-27.

³ 411 U.S. at 327.

⁴ See 355 F. Supp. at 1244. Several commentators have noted the opinion of the trial court. See, e.g., *Kinder, Vessel Owner's Liability to the States for Oil Pollution Damage*, 2 *Env. Affairs* 562 (1972); *Swan, Challenges to Federalism: State Legislation Concerning Marine Oil Pollution*, 2 *Ecology L.Q.* 437 (1972); *Note, Toward a State Remedy for Oil Spill Damages: An Insurance Approach?*, 47 *N.Y.U.L. Rev.* 60 (1972).

Plaintiffs claimed that the Florida Act unconstitutionally intruded into the exclusive domain of federal admiralty jurisdiction on the basis of six grounds. First, it imposes unlimited liability on vessels and terminal facilities for state cleanup costs and property damage without proof of negligence. *Fla. Stat. Ann.* § 376.12 (Supp. 1972). Second, it suggests the allowance of private plaintiff recovery for property damage. *Fla. Stat. Ann.* §§ 376.12, .14(3) (Supp. 1972). Although the language of § 376.12 does not explicitly state that vessels or facilities are liable to private parties for costs of cleanup or other damages, § 376.14(3) states in pertinent part:

Any claim for costs of cleanup, civil penalties, or damage by the state, and any claim for damages by an injured person, may be brought directly against the bond, the insurer, or any other person providing evidence of financial responsibility.

The Act thus suggests that private causes of action for cleanup costs and damages exist. Third, the Act requires vessels and terminal facilities to maintain evidence of financial responsibility by insurance or surety bond satisfactory to the state. *Fla. Stat. Ann.* § 376.14(1) (Supp. 1972). Fourth, it compels compliance with state regulations prescribing equipment and procedures for the prevention, containment and removal of oil spills by prohibiting certain vessels and terminal facilities from operating without licenses issued by the Florida Department of Natural Resources. *Fla. Stat. Ann.* § 376.06(1)(8) (Supp. 1972). The only vessels subjected to the licensing requirement are those "used to transport oil, petroleum products or their by-products, and other pollutants between the facility and vessels within state waters." *Fla. Stat. Ann.* § 376.06(4) (Supp. 1972). Fifth, the Florida Act subjects facilities and some vessels to state inspection. *Fla. Stat. Ann.* § 376.07(2)(a) (Supp. 1972). This section empowers the Department of Natural Resources to adopt inspection requirements for vessels and facilities. Section 376.06 specifically deals with licensing requirements and procedures. Finally, the plaintiffs stated that the Act establishes a coastal protection fund to be used to meet certain limited administration, abatement and rehabilitation costs, which fund was financially maintained by license fees and polluter reimbursement. *Fla. Stat. Ann.* § 376.11(1) (Supp. 1972). This provision provides in pertinent part: "To this fund shall be credited all license fees, penalties, and other fees and charges"

⁵ U.S. Const. art. I, § 8, cl. 3. The commerce clause grants Congress the power "To regulate Commerce with the foreign Nations, and among the several States"

⁶ 335 F. Supp. at 1245. Specifically, plaintiffs objected to the state's imposition of unlimited liability on vessels engaged in foreign and interstate commerce, the operational and

challenged certain individual state provisions as denials of due process and equal protection under the Fourteenth Amendment.⁷

At trial, a three-judge federal court held the Florida Act void as an unconstitutional intrusion into the federal maritime domain.⁸ Accordingly, the trial court did not consider the other constitutional claims.⁹ The Supreme Court, on direct appeal, reversed and unanimously HELD: that the waiver of preemption in the Water Quality Improvement Act (WQIA)¹⁰ is valid and that the police power of the state of Florida is sufficient to permit Florida, in the present setting of the case, to establish any "requirement or liability" concerning the impact of oil spillages on its interests or concerns.¹¹ In particular the Court noted that the exclusive domain of federal admiralty jurisdiction extends only to encompass the vessel-crew relationship.¹² The Court further stated that in the present setting of the case it could not find any statutory conflict or preemption that would prevent Florida from enforcing legislation which establishes requirements for vessels and imposes a strict standard of liability upon the marine transfer of oil.¹³

The *Askew* decision is significant in several respects. First, it expands the permissible scope of state remedial action against tortious activity cognizable under the traditional federal admiralty jurisdiction and establishes that the expanded area of federal admiralty jurisdiction does not in any way impede state remedial legislation.¹⁴ Further, the *Askew* decision establishes that state legislation which provides for state and private damages for marine oil spill consequences is compatible with federal enactments on the subject.¹⁵ Finally, the *Askew* opinion suggests that states can impose financial responsibility requirements and operational regulations upon those engaged in the interstate transfer of oil without running afoul of constitutional objections.¹⁶ In short, *Askew* is significant because it allows states jurisdiction over torts traditionally subjected to the exclusive federal admiralty jurisdiction and it permits states to regulate—to the extent of imposing financial responsibility and operational requirements—those engaged in interstate commerce. The finding of constitutionality in *Askew* carries the suggestion that

inspection requirements running to vessels, and the containment gear provision, since these provisions imposed a burden on interstate commerce. Brief for Appellee American Waterways Operators, Inc. at 63, 67, 70, *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325 (1973).

⁷ U.S. Const. amend. XIV. See 335 F. Supp. at 1245.

⁸ 335 F. Supp. at 1246.

⁹ *Id.* at 1245.

¹⁰ 33 U.S.C. § 1161(o)(2) (1970).

¹¹ 411 U.S. at 328.

¹² *Id.* at 344.

¹³ *Id.* at 328. It should be noted that the Court left open the possibility of conflict in the future when the Florida Act was actually interpreted or enforced.

¹⁴ See text at notes 70-71 *infra*.

¹⁵ See text following note 71 *infra*.

¹⁶ See text at note 107 *infra*.

other states may similarly legislate specifically in the oil spill area, despite the existing federal admiralty remedies and the federal enactments in the area.

This note will examine the broad question of the extent to which a state may legislate in the admiralty area. Specifically, the traditional remedies to prevent and remedy oil spills available to federal, state and private plaintiffs will first be examined, noting several factors that have mitigated the value of remedial action. Next, the federal legislative response to traditional remedial difficulties will be explored, followed by an exposition of the legislative response of Florida. Thereafter, this note will examine the several constitutional barriers to state legislation, which, like the Florida Act, attempts to provide a state remedy for a tort cognizable under federal admiralty jurisdiction and further attempts to regulate a subject of interstate commerce. After analyzing the holding in the *Askew* decision, it will be submitted that the Court adopted an improvident basis of reasoning in overcoming one constitutional difficulty presented by the Florida Act. Prior to *Askew*, state legislation in the admiralty area was invalid if it altered the standard of liability existing in admiralty or imposed financial responsibility requirements on vessels engaged in interstate commerce. The *Askew* Court implicitly abandoned this determinative criteria and redefined the area of exclusive federal admiralty jurisdiction to encompass only the particular factual situation involving the relation between a vessel and its crew. It will be submitted that this redefinition will carry undesirable ramifications.

An examination of the remedies historically available for damage caused by oil spills reveals that federal, state and private plaintiffs could obtain relief in both federal and state courts;¹⁷ however, litigants were subject to certain limitations in both forums. In federal courts, plaintiffs could invoke federal admiralty jurisdiction¹⁸ and seek to impose liability for an oil spill using theories based on negligence or unseaworthiness.¹⁹ Nevertheless, the

¹⁷ See generally Sweeney, *Oil Pollution of the Oceans*, 37 *Ford. L. Rev.* 155, 164-80 (1968).

¹⁸ U.S. Const. art. III, § 2. This constitutional provision confers upon federal courts judicial powers "to all Cases of admiralty and maritime Jurisdiction"

The admiralty jurisdiction is defined "by reference to maritime matters, but these in turn are defined with regard to the character of the waters where or with reference to which the given transaction or occurrence takes place." G. Gilmore & C. Black, *The Law of Admiralty* 28 (1957). More specifically, the admiralty jurisdiction of the United States extends to all waters, salt or fresh, with or without tides, natural or artificial, which are in fact navigable in interstate or foreign water commerce, . . . whether or not the occurrence or transaction that is the subject-matter of the suit is confined to one state.

Id. at 28-29 (citations omitted).

¹⁹ Liability for the maritime tort of oil pollution has required proof of causation, see *Salaky v. The Atlas Barge No. 3*, 208 F.2d 174 (2d Cir. 1953), and proof of negligence, see *United States v. Standard Oil Co.*, 217 F.2d 539 (6th Cir. 1954). At least one commentator has suggested unseaworthiness as an inappropriate basis for recovery in oil spill cases. Swan,

potential use of federal admiralty jurisdiction against oil spill damage was severely restricted by the jurisdictional prerequisite that the injury claimed by the plaintiff had to be consummated on navigable waters.²⁰ Accordingly, federal admiralty jurisdiction could not be invoked for shoreside injuries although the injury originated in navigable waters. However, in 1948, Congress enacted the Admiralty Extension Act (AEA)²¹ which extended the scope of federal admiralty jurisdiction to encompass all injuries caused by a vessel on navigable waters, thereby including injuries to the shore or shore property. In short, it is only within recent times that federal jurisdiction has provided a means of relief for all consequences of oil spills.

Correspondingly, federal, state and private plaintiffs have had the opportunity to seek relief from oil spills in state courts. Although states have been precluded from granting relief for matters within federal admiralty jurisdiction by virtue of the exclusive grant of admiralty jurisdiction to the federal courts,²² relief in state courts has been available for oil spill injuries outside the federal maritime jurisdiction. However, the enactment of the AEA and the consequent extension of federal maritime jurisdiction has made the continued viability of state court remedies for the effects of oil spills questionable.

Regardless of the forum chosen, the plaintiff's remedy for the tort of oil pollution may prove illusory.²³ The first obstacle to successful litigation and the imposition of liability is the problem of proof. Since oil spills often occur at sea, it may be difficult, if not impossible, to prove the source of the spill.²⁴ Crew members of the discharging vessel might be the only witnesses available and they might refuse to admit to the involvement of their ship. Similarly, proof of negligence or unseaworthiness, the two basic theories of

supra note 4, at 458 n.145. Accord, *Cardinale v. Union Oil Co.*, 136 F. Supp. 487 (N.D. Cal. 1956).

²⁰ Federal admiralty jurisdiction did not extend to damages to a seaside wharf and packing house destroyed by a fire originating on a ship in navigable waters. *The Plymouth*, 70 U.S. (3 Wall.) 20 (1865). However, an oil spill from a pipeline on shore which caused damages to vessels within a yacht basin was considered within the cognizance of federal admiralty jurisdiction since the injuries were consummated on navigable waters. *Firemen's Fund Ins. Co. v. Standard Oil Co.*, 339 F.2d 148 (9th Cir. 1964).

²¹ 46 U.S.C. § 740 (1970). This statute provides in pertinent part:

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.

²² See text at note 50 infra.

²³ See Note, supra note 4.

²⁴ See *Salaky v. The Atlas Barge No. 3*, 208 F.2d 174 (2d Cir. 1953). One court, recognizing the extreme difficulty of proof of negligence in actions against vessels for damage from oil spills, held that the application of the doctrine of *res ipsa loquitur* was appropriate and justified the determination that the vessel was negligent. *California, by and through its Dep't of Fish & Game v. S.S. Bournemouth*, 318 F. Supp. 839, 841-42 (C.D. Cal. 1970).

maritime tort recovery, might be complicated by the unwillingness of crew members to testify to coworker negligence or to testify against the interest of their employer, the owner of the vessel. Further impediments to recovery are the provisions of the Limited Liability Acts (LLA),²⁵ which may insulate a prospective defendant fully or partially from a damage award. Moreover, even if the LLA does not apply, a prospective defendant might be financially incapable of meeting a judgment. If the polluter possessed limited assets, the available cause of action in either federal or state courts would be meaningless as a practical matter. Thus, although remedial actions in federal and state courts have been available to prospective plaintiffs, resort to these remedies may be unsatisfactory in many circumstances.

Recognizing the inadequacy of existing remedies to combat oil pollution, Congress in 1970 enacted the Water Quality Improvement Act,²⁶ which in part provides the federal government a new means to recover costs incurred in oil spill cleanup operations.²⁷ In partial alleviation of the prior difficult standard of proof, the WQIA imposes strict liability upon vessels and oil facilities for oil spills.²⁸ Further, the WQIA establishes liability ceilings of \$14 million and \$8 million for vessels and facility owners respectively, and under certain circumstances imposes unlimited liability or totally exempts prospective defendants from liability.²⁹ Additionally, the WQIA establishes a requirement that vessels provide satisfactory evidence of financial responsibility—either by posting a bond or satisfactorily establishing insurance coverage—to insure collection of cleanup costs to the federal government when it is entitled to such recovery.³⁰ Further, the WQIA attempts to strengthen operating

²⁵ 46 U.S.C. §§ 181-96 (1970). In substance the LLA either exonerates the owner of a vessel from liability or limits his liability to the value of his interest in the then pending freight of the vessel. 46 U.S.C. § 183(a) (1970). However, if it can be shown that the owner knew of the negligence or that the act in question was committed or performed at the direction of the owner, liability is unlimited. 46 U.S.C. § 183c (1970).

The LLA has been applied in suits against vessels even when the tort was not within federal admiralty jurisdiction. *Richardson v. Harmon*, 222 U.S. 96, 106 (1911).

²⁶ 33 U.S.C. §§ 1151, 1152, 1155, 1156, 1158, 1160-75 (1970). The WQIA was amended by the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. §§ 1251 et seq. (Supp. II 1972). Since the WQIA was in effect at the time of the enactment of the Florida Act, it, rather than the 1972 Amendments, will be the subject of analysis in this note.

²⁷ 33 U.S.C. §§ 1161(a)-(p) (1970).

²⁸ 33 U.S.C. § 1161(f) (1970).

²⁹ *Id.* Unlimited liability will be imposed where "the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity or knowledge of the owner." *Id.* Liability will be excused where

an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses

Id.

³⁰ 33 U.S.C. § 1161(p)(1) (1970). Only vessels over 300 gross tons must comply with this section. *Id.*

requirements for vessels and facilities involved in the marine transfer or distribution of oil by providing authority for federal regulation designed to prevent and control oil spills by establishing required procedures and equipment.³¹ Despite this grant of authority, such preventative regulations were not immediately promulgated.³² Rather, the federal government developed regulations under another section of the WQIA providing for a National Contingency Plan to direct oil spill cleanup operations.³³

As helpful as the WQIA may be for the recovery of federal oil spill cleanup costs,³⁴ the enactment affords no assistance to state and private plaintiffs attempting to recover for cleanup costs and property damage.³⁵ Additionally, although the WQIA was addressed to oil spill prevention and control, the federal regulations focused on cleanup operations and federal notification rather than pollution prevention via equipment regulations.³⁶ Hence, in 1970, after the enactment of the WQIA and a series of local oil spills with resultant serious damage, the Florida legislature enacted the Florida Act. In broad approach, the Florida Act attempts to prevent future oil spills by subjecting enterprises engaged in the marine transfer or distribution of oil or other hazardous substances to operating requirements and seeks to brighten the remedial picture by insuring financial responsibility and providing a state cause of action for oil spills founded on strict liability.³⁷ As noted above,³⁸ the Florida Act imposes a licensing requirement which prohibits facilities from operating without licenses to prevent and control oil spills. In order to obtain and retain state licensing, carriers must comply with state regulations pertaining to essential equipment and procedures for oil spill prevention, control and removal promulgated by the State Department of Natural Resources; the Florida Act provides that

³¹ 33 U.S.C. § 1161(j)(1)(C) (1970).

³² The Coast Guard proposed equipment and operational requirements for vessels and facilities in 1971. 36 Fed. Reg. 24,960 (1971). However, it was not until Dec. 1972 that the Coast Guard issued equipment and operational regulations that will become effective July 1, 1974. See 33 C.F.R. §§ 154-56 (1973).

³³ 35 Fed. Reg. 8508 (1970).

³⁴ For comments on the inadequacies of the WQIA, see generally Barry, *The Evolution of the Enforcement Provisions of the Federal Water Pollution Control Act: A Study of the Difficulty in Developing Effective Legislation*, 68 Mich. L. Rev. 1103 (1970); Printz, *Water Quality Legislation: Past and Present*, 9 Houston L. Rev. 690 (1972); Statutory Comment, *The Control of Pollution By Oil Under the Water Quality Improvement Act of 1970*, 27 Wash. & Lee L. Rev. 278 (1970); Note, 55 Cornell L. Rev. 973 (1970).

³⁵ It should be noted that the 1972 Amendments provide authority for reimbursement of state cleanup costs. 33 U.S.C. § 1321(c)(2)(H) (Supp. II 1972).

³⁶ Compare 35 Fed. Reg. 8508 (1970) with 33 C.F.R. § 151 (1970).

³⁷ In explaining the Florida Act's underlying premise, the State of Florida stated in its brief to the United States Supreme Court: "Continued protection of maritime interests to the detriment of the state and its citizens is no longer justified in an era of sophisticated maritime insurance and super-tanker." Brief for Appellant at 16, *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325 (1973).

³⁸ See text at note 4 *supra*.

compliance with these regulations is a condition precedent to issuance or renewal of the necessary license.³⁹ In addition, the Florida Act responded to a void in practicable remedial action available to state and private citizens to combat oil spill consequences—a void created by the inefficacy or prior state and private remedial action under both federal admiralty and state court jurisdiction and not filled by the enactment of the WQIA. The Florida Act brightens the remedial picture by attempting to ameliorate several of the problems that had previously undermined adequate relief for oil spill consequences. To recover under the Florida Act, the state does not need to prove negligence; rather, the Florida Act provides that the state may recover all its cleanup costs by merely pleading and proving that a prohibited discharge has occurred.⁴⁰ With respect to private plaintiffs the Florida Act appears to create a cause of action cognizable in Florida courts.⁴¹ Additionally, by its terms, the Florida Act purports to impose unlimited liability upon carriers and facility operators for state cleanup costs and oil spill damage incurred by the state and private persons.⁴² Mandatory evidence of financial responsibility provided by insurance or surety bonds maintained by terminal operators and vessels as required by the Florida Act relieves the problem of financially irresponsible defendants by guaranteeing available money for meritorious state and private claimants.⁴³ Finally, the coastal protection fund also guarantees reimbursement to the state for certain administrative and cleanup expenses.⁴⁴ Further, the Florida Act attempted to supplement the WQIA in respect to oil spill prevention and control regulations, perhaps spurred by specific provisions of the WQIA calling for state aid to the federal removal plans.⁴⁵

Subsequent to the passage of the Florida Act, the federal government enacted another piece of legislation directed to oil spill control. The Ports and Waterways Safety Act of 1972 (Ports and Waterways Act)⁴⁶ authorizes the federal government to control and regulate vessel traffic, to establish procedures for the transfer and handling of certain substances, to establish minimum safety

³⁹ Fla. Stat. Ann. § 376.06(3) (Supp. 1972).

⁴⁰ Fla. Stat. Ann. § 376.12 (Supp. 1972). See note 4 *supra*.

⁴¹ Fla. Stat. Ann. §§ 376.12, .14 (Supp. 1972). See note 4 *supra*.

⁴² Fla. Stat. Ann. § 376.12 (Supp. 1972). See note 4 *supra*.

⁴³ Fla. Stat. Ann. § 376.14 (Supp. 1972). See note 4 *supra*.

⁴⁴ Fla. Stat. Ann. § 376.11 (Supp. 1972). See note 4 *supra*.

⁴⁵ The WQIA in several provisions encourages state action. In regard to the National Contingency Plan, the President is to assign duties and responsibilities in coordination with state and local agencies. 33 U.S.C. § 1161(c)(2)(A) (1970). Additionally, the chemical dispersants schedules are to be drawn in cooperation with the states. 33 U.S.C. § 1161(c)(2)(G) (1970). Under 33 U.S.C. § 1161(j)(1)(B) (1970), the President is directed to establish criteria for the development and implementation of local and regional contingency plans. Further, in 33 U.S.C. § 1161(o)(2) (1970), there is a waiver of preemption as to the states' imposition of "any requirement or liability" with respect to oil discharges, while 33 U.S.C. § 1161(o)(3) (1970) contemplates some state regulation of facilities.

⁴⁶ 33 U.S.C. §§ 1221-27 (Supp. II 1972).

standards for structures, and to establish rules and regulations with respect to the design and construction of vessels.⁴⁷ The Act specially provides that it does not "prevent a State or political subdivision thereof from prescribing for structures only higher safety equipment requirements or safety standards than those which may be described pursuant to this title."⁴⁸ Thus, at least in regard to facilities, states may establish higher equipment and safety requirements than those established under certain federal standards. The federal act is silent on the imposition of state safety and equipment requirements on vessels. In essence, the federal act is preventative in nature and seeks to protect the navigable waters and resources of the environment from harm resulting from vessel or structure damage, destruction or loss.⁴⁹

An examination of precedent in constitutional law reveals several potential barriers to a state enactment which, like the Florida Act, attempts to provide a remedy for oil spill consequences and also attempts to regulate subjects of interstate commerce. One objection to the Florida Act is that it unconstitutionally intrudes upon the exclusive domain of federal admiralty jurisdiction, since it provides for remedial actions in state courts. This objection stems from the constitutional grant of admiralty jurisdiction to the federal courts,⁵⁰ and section 9 of the Judiciary Act of 1789, which provides:

[T]he district courts . . . shall have, exclusively of the courts of the several States, . . . 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 it⁵¹

As early as 1892 the Supreme Court recognized that federal admiralty jurisdiction encompassed an exclusive domain. In *Steamboat Co. v. Chase*,⁵² the Court upheld state legislation which created a wrongful death action in state courts despite the fact that no similar remedy existed under federal admiralty jurisdiction. In response to defendant's contention that the federal admiralty jurisdiction was exclusive, the Court replied that the federal jurisdiction is exclusive only to the extent that it encompasses in rem actions.⁵³ Similarly, the Court four years later in *Sherlock v. Alling*⁵⁴ upheld another state wrongful death statute which provided a remedy in state court. Although the defendant ship owner in

⁴⁷ 33 U.S.C. § 1221 (Supp. II 1972).

⁴⁸ 33 U.S.C. § 1222 (Supp. II 1972).

⁴⁹ 33 U.S.C. § 1221 (Supp. II 1972).

⁵⁰ See note 18 *supra*.

⁵¹ Ch. 20, § 9, 1 Stat. 76, as amended, 28 U.S.C. § 1333 (1970).

⁵² 83 U.S. (16 Wall.) 522 (1872).

⁵³ *Id.* at 533-34.

⁵⁴ 93 U.S. 99 (1876).

Sherlock did not explicitly refer to the exclusive federal admiralty jurisdiction, he did claim that the Indiana wrongful death provision would interfere with interstate commerce.⁵⁵ The *Sherlock* Court examined the defendant's objection but found to the contrary that the state enactment was valid. The Court especially noted that the act was not particularly directed at those engaged in interstate commerce, but, rather, was generally applicable to persons engaged in all callings,⁵⁶ and that the state statute only "indirectly and remotely" affected the operation of commerce.⁵⁷

Several years later, in 1893, in *The City of Norwalk*,⁵⁸ the extent to which state legislation could provide a state remedy notwithstanding federal admiralty jurisdiction was again considered in a federal court. In *Norwalk* the administratrix wife of an employee who was killed in the course of his employment aboard ship invoked the federal admiralty jurisdiction and brought a wrongful death action in federal court founded on a state statute.⁵⁹ Responding to the assertion that the state wrongful death action unconstitutionally intruded into the exclusive domain of federal admiralty jurisdiction, Judge Addison Brown stated:

There seem, therefore, to be at least three classes of subjects, (none of them affecting, however, what is peculiar to the general maritime law, or touching its international or interstate relations,) in which state legislation is competent to affect the rights of parties in courts of admiralty, in the absence of legislation by Congress, viz.: (1) In the establishment of general rights of persons and property within the state limits; (2) in the exercise of the police power; (3) in certain local regulations of a maritime nature.⁶⁰

Thereafter, Judge Brown found that the wrongful death statute fulfilled all three criteria, since the statute, first, was a general law affecting personal rights irrespective of any relation to maritime activities; second, was directed at protecting life and averting pauperism and dependency of workers' survivors—matters within the state police power; and, finally, was local in scope and did not interfere with either interstate or international interests or the necessary uniformity of maritime law.⁶¹ Accordingly, the court permitted the application of the state wrongful death statute despite its impact of providing a remedy not available in admiralty. In so doing, *Norwalk* established broad criteria to determine the extent to

⁵⁵ Id. at 102.

⁵⁶ Id. at 103.

⁵⁷ Id. at 104.

⁵⁸ 55 F. 98 (S.D.N.Y. 1893).

⁵⁹ Id. at 100.

⁶⁰ Id. at 108.

⁶¹ Id.

which a state statute providing for state remedies can validly deal with subjects of federal admiralty jurisdiction.

Subsequent to the *Norwalk* decision, the Supreme Court in *Southern Pacific Co. v. Jensen*⁶² rejected a state statute as impermissibly intruding on the exclusive sphere of federal admiralty jurisdiction. In *Jensen*, the widow of a dock worker recovered an award from a state workmen's compensation board, despite the objections of the employer-vessel owner that the remedy under federal admiralty jurisdiction was exclusive.⁶³ The Court, in a 5-4 decision, noted the provisions of the New York law imposing liability with proof of negligence and requiring employers' financial responsibility by either joining a state fund, insuring with a private insurance group, or providing proof of financial ability to cover damage awards for injuries to employees. The Court concluded that the state had intruded on the exclusive domain of federal admiralty jurisdiction, finding that it impinged upon the harmony and uniformity essential to the administration of admiralty law.⁶⁴ In so doing the Court stressed the difficulty of accurately defining the permissible scope of state legislation:

[I]t would be difficult, if not impossible, to define with exactness just how far the general maritime law may be changed, modified, or affected by state legislation. That this may be done to some extent cannot be denied. . . . Equally well established is the rule that state statutes may not . . . affect the general maritime law beyond certain limits. . . . [P]lainly, we think, no such legislation is valid if it . . . works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations.⁶⁵

Nevertheless, the *Jensen* Court concluded that the workmen's compensation law did interfere with the uniformity needed in interstate affairs involving maritime subjects.

Three years after *Jensen*, in *Knickerbocker Ice Co. v. Stewart*,⁶⁶ the Court stressed that the requirements of uniformity in the maritime area were imposed by constitutional mandate. After the *Jensen* decision, Congress purported to change the *Jensen* result by amending the Judiciary Act in such a manner as to make the federal admiralty and maritime jurisdiction non-exclusive over claimants under any state workmen's compensation act.⁶⁷ The

⁶² 244 U.S. 205 (1917).

⁶³ *Id.* at 209-10.

⁶⁴ *Id.* at 217.

⁶⁵ *Id.* at 216 (citations omitted).

⁶⁶ 253 U.S. 149 (1920).

⁶⁷ Act of Oct. 6, 1917, ch. 97, 40 Stat. 395. A second amendment to the Judiciary Act,

Knickerbocker Court ruled the amendment unconstitutional, reiterating the *Jensen* view that the application of various state workmen's compensation laws on subjects in federal maritime jurisdiction would create an impediment to the fundamental function of the admiralty clause—the preservation of harmonious and uniform rules in maritime matters provided by federal control.⁶⁸

After the Court in *Jensen* and *Knickerbocker* held unconstitutional this application of state workmen's compensation laws to subjects of federal admiralty jurisdiction, the Court in 1921 reexamined the constitutionality of the application of state wrongful death actions to maritime subjects. In *Western Fuel Co. v. Garcia*⁶⁹ the Court allowed application of a state wrongful death action in a suit brought under federal admiralty jurisdiction. In *Garcia*, an employee was killed while working in the hold of a ship chartered to his employer.⁷⁰ After his death, the employee's survivors, invoking federal admiralty jurisdiction, successfully brought an action in federal district court seeking damages for the employee's wrongful death as provided by a state statute.⁷¹ After noting that the action was in personam, the Court held that the wrongful death action was local in character and would not interfere with the necessary harmony and uniformity of admiralty law.⁷² Therefore, the Court determined that such an action did not unconstitutionally intrude upon the exclusive domain of federal admiralty jurisdiction. Several years later the Court reached a similar result when considering the application of another state's wrongful death statute.⁷³ In sum, an examination of decisions involving state statutes which extend state jurisdiction over tortious activity cognizable in federal admiralty jurisdiction reveals that such statutes have been upheld only when they have been found consistent with the uniformity and harmony thought to be essential to federal admiralty law. Although the Court has proffered no test for determining whether a particular state statute passes constitutional muster, a comparison of the Court's decisions reveals that statutes which impose liability upon proof of negligence have been found acceptable, while those which impose strict liability upon subjects of federal maritime jurisdiction and establish operating prerequisites—e.g., the acquisition of insurance coverage—have been found violative of constitutional demands.

A second constitutional barrier to state enactments which, like the Florida Act, may affect and govern the operations of enterprises

similar to the first, was declared invalid in *Washington v. W.C. Dawson & Co.*, 264 U.S. 219, 223 (1924).

⁶⁸ 253 U.S. at 164.

⁶⁹ 257 U.S. 233 (1921).

⁷⁰ *Id.* at 238-39.

⁷¹ *Id.* at 239.

⁷² *Id.* at 242.

⁷³ *Just v. Chambers*, 312 U.S. 383 (1941). A state survival statute was enforced in admiralty court to permit an injured plaintiff to bring suit against the estate of a deceased tortfeasor. See *id.* at 391-92.

engaged in interstate commerce, derives from the interaction of the commerce clause with the supremacy clause.⁷⁴ In the past, whenever federal statutes—enacted by Congress pursuant to its power under the commerce clause—have conflicted directly with state legislation, such state legislation has been declared unconstitutional, as dictated by the supremacy clause. Hence, in *McDermott v. State of Wisconsin*,⁷⁵ a state law requiring certain food and drug labelling to the exclusion of all other labelling was held void, since compliance with the state statute would comprise a violation of federal laws pertaining to food and drug labelling. Similarly, in *Campbell v. Hussey*,⁷⁶ a state enactment establishing standards of classification and inspection for tobacco products was declared unconstitutional as conflicting with the provisions of a federal statute designed to create uniform standards.

However, state legislation governing matters of interstate commerce has been upheld despite an apparent conflict with federal legislation. Hence, where federal legislation has established a minimum requirement, stricter state legislation has been upheld,⁷⁷ as has state legislation directed at a purpose different than that of federal legislation.⁷⁸

State enactments affecting subjects engaged in interstate commerce have also met with constitutional objection on the distinct grounds that the state legislation has been preempted by federal legislation. Hence, in *Missouri Pacific R.R. v. Porter*,⁷⁹ state legislation prohibiting exculpatory clauses in bills of lading was found invalid in view of Congress' intent in passing a federal enactment authorizing carriers to determine the substance of bills of lading. Similarly, in *Erie R.R. v. New York*⁸⁰ the Court found that federal legislation providing for regulation of the working conditions of certain employees was intended to be comprehensive, and therefore struck down state legislation with stricter standards designed to accomplish the same objective. Nevertheless, when federal legislation has been found to be noncomprehensive in intent the preemption argument has failed. For example in *Skiriotes v. Florida*,⁸¹ the Court held that a federal enactment limiting the size of certain commercial sponges did not preclude state legislation limiting diving apparatus used in the same enterprise. In sum, even

⁷⁴ U.S. Const. art. VI. The supremacy clause states in pertinent part:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

⁷⁵ 228 U.S. 115 (1913).

⁷⁶ 368 U.S. 297 (1961).

⁷⁷ *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963).

⁷⁸ *Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440 (1960).

⁷⁹ 273 U.S. 341 (1927).

⁸⁰ 233 U.S. 671 (1914).

⁸¹ 313 U.S. 69 (1941).

though a state enactment does not explicitly conflict with a federal enactment, it may be found unconstitutional if it is determined that Congress intended the federal act to preempt the field.⁸²

Finally, state legislation affecting subjects engaged in interstate commerce hazards the risk of another constitutional objection. Considered apart from any federal legislation, state enactments may be found in violation of the commerce clause if they interfere with interstate commerce. As early as 1824, in *Gibbons v. Ogden*⁸³ the Court enunciated the proposition that the commerce clause precluded states from enacting legislation governing interstate commerce. In *Gibbons* the Court considered the validity of an exclusive license to operate vessels within a state's territorial waters.⁸⁴ After first establishing that Congress alone can regulate interstate commerce,⁸⁵ and further indicating that Congress may adopt either prospectively or retrospectively state legislation regulating interstate commerce,⁸⁶ the *Gibbons* Court found that the state law in question offended a federal enactment and could not therefore be upheld.⁸⁷ Similarly, in *Cooley v. Board of Wardens of the Port of Philadelphia*⁸⁸ the Court recognized that some subjects demanded exclusive federal regulation, even though the Court there determined that local pilotage laws did not intrude upon interstate commerce so as to deny their validity. Subsequent to the *Gibbons* and *Cooley* decisions the Court rejected state legislation which it found unconstitutionally interfered with interstate commerce. Hence, in *Seaboard Air Line Ry. v. Blackwell*⁸⁹ state legislation prescribing maximum train speeds at railroad crossings was found to be contrary to the interests of interstate commerce and was therefore declared invalid. Further, in *Southern Pacific Co. v. Arizona*,⁹⁰ the Court found unconstitutional state laws governing the maximum length of trains as interfering with interstate commerce. In discussing the criterion to be applied in determining the validity of such state legislation, the *Southern Pacific* Court stated: "[W]ithout controlling Congressional action, a state may not regulate interstate commerce so as substantially to affect its flow or deprive it of needed uniformity in its regulation. . . ."⁹¹ It can be inferred from these opinions that state legislation purporting to regulate subjects of interstate commerce may encounter constitutional objections unless the local legislation has specifically been adopted by Congress.

⁸² See Note, 13 B.C. Ind. & Com. L. Rev. 813, 815 (1972).

⁸³ 22 U.S. (9 Wheat.) 1 (1824).

⁸⁴ Id. at 2.

⁸⁵ Id. at 88.

⁸⁶ Id. at 91.

⁸⁷ Id. at 97.

⁸⁸ 53 U.S. (12 How.) 318, 340 (1851).

⁸⁹ 244 U.S. 310 (1917).

⁹⁰ 325 U.S. 761 (1945).

⁹¹ Id. at 779-80.

To briefly summarize, state legislation which, like the Florida Act, first attempts to provide a state remedy for activity which is subject to the federal admiralty jurisdiction and also attempts to regulate subjects engaged in interstate commerce encounters several constitutional barriers. To the extent that such legislation purports to provide a state remedy against a party subject to federal admiralty jurisdiction, it may be declared unconstitutional if, like workmen's compensation statutes imposing financial responsibility requirements and liability without proof of negligence, it is found to impair the necessary harmony and uniformity of admiralty law. Correspondingly, insofar as a state enactment purports to regulate a subject of interstate commerce, such an enactment may be found unconstitutional, first, if it directly conflicts with federal legislation; second, if it attempts to regulate an area over which federal regulation was intended to be exclusive; or, third, if it merely imposes burdens on interstate commerce.

After analyzing the applicable constitutional precedents the Supreme Court in *Askew* limited the *Jensen* constraints on state jurisdiction over tortious activity encompassed within the traditional scope of federal admiralty jurisdiction—i.e., torts consummated on navigable waters. The Court indicated that only state legislation that purported to alter the existing maritime liability between a vessel and its crew would be unconstitutional.⁹² Thus, if state legislation did not alter this relationship it would pass constitutional muster and would not interfere with the uniformity and harmony essential to the admiralty domain. Accordingly, the Florida Act could impose a remedy for oil spill injuries sustained at sea even though this remedy differed from the existing remedy in admiralty. In addition, the Court held that a state court could provide a remedy for torts encompassed within federal admiralty jurisdiction by virtue of the AEA,—i.e., torts consummated on land, such as shoreside injuries—since the AEA was not designed to oust shoreside pollution from the permissible sphere of state regulation.⁹³ The Court noted that an exclusive federal admiralty jurisdiction which deprived states of their police powers in areas traditionally outside the admiralty domain was not an intended result of the AEA.⁹⁴ Hence, the Florida Act, which provided for state jurisdiction over shoreside injuries sustained from oil spills, was found constitutionally permissible.

The Court in *Askew* further concluded that the Florida Act did not fatally conflict with certain federal enactments. First, the Court noted that it could not find any "statutory impediment" in permitting Florida to establish any "requirement or liability" concerning the impact of oil spills in Florida's interest or concerns.⁹⁵ In respect

⁹² 411 U.S. at 344.

⁹³ Id. at 341.

⁹⁴ Id. at 341, 343.

⁹⁵ Id. at 328.

to the WQIA, the Court held that the imposition of liability by the Florida Act for recovery of state and private damages was not in direct conflict with the WQIA liability provisions since they encompassed only federal cleanup costs.⁹⁶ Second, as to the imposition of unlimited liability on vessels and facilities by the Florida Act and its potential conflict with the dollar limits established in the WQIA, the Court declined to resolve the issue until actual conflict did arise.⁹⁷ Further, the Court stated that the imposition of liability without fault was not in conflict with the WQIA since the federal act applies only to the federal government and leaves the states free to impose their own standards of liability.⁹⁸ As to the Florida requirements of evidence of financial responsibility on facilities and vessels, the Court simply stated that there was no conflict with the WQIA.⁹⁹ Finally, the Court stated that the imposition of operating regulations on facilities and vessels by Florida as a prerequisite to licensing was not per se invalid, despite the fact that the WQIA provided for federal regulations. Rather, the Court decided that it should await a concrete dispute between federal and Florida regulations.¹⁰⁰ In short, the Court concluded that all provisions of the Florida Act were, in the present setting of the case, compatible with the WQIA.

Analyzing the relationship between the Florida Act and other federal enactments, the Court concluded that no conflict between the LLA and the Florida Act had yet been presented so as to warrant declaring the Florida Act unconstitutional. Noting that the LLA applies only to vessels and that an award under the Florida Act in excess of the liability limits of the LLA would likely be unconstitutional, the Court commented that the Florida Act was susceptible to a construction by the Florida courts which would be in harmony with the federal act.¹⁰¹ The Court also noted that the Florida Act which permitted state regulation of facilities did not conflict with the Ports and Waterways Act, since that federal enactment allows states to prescribe standards which go beyond the minimum federal requirements.¹⁰²

In regard to the federal preemption issue, the Court held that there was no preemption since the WQIA by its own terms did not intend to preempt state imposition of liability or requirements.¹⁰³ It should be noted that the Court does not mention a possible distinction which could be made between state legislation which attempts to impose "any requirement or liability with respect to a discharge of

⁹⁶ Id. at 331.

⁹⁷ Id. at 332.

⁹⁸ Id. at 331.

⁹⁹ Id.

¹⁰⁰ Id. at 337.

¹⁰¹ Id. at 331.

¹⁰² Id. at 337.

¹⁰³ Id. at 329. The Court referred to 33 U.S.C. § 1161(o) (1970), which contains a waiver of preemption.

oil"¹⁰⁴ and state legislation which imposes requirements on vessels before the fact of a discharge. Further, the Court did not consider the possible constitutional invalidity of the waiver of preemption. In an earlier case, *Knickerbocker*, the Court struck down a federal amendment to the Judiciary Act attempting to validate state legislation in the admiralty jurisdiction. The Court reasoned that it was beyond the authority of Congress to grant this power to the states. It might be argued that the *Askew* Court failed to consider the need for uniformity in the admiralty area where interstate commerce is affected. The *Askew* Court found state police power sufficient to justify the federal waiver of preemption in the WQIA which encourages states to impose liability on those traditionally encompassed in the admiralty jurisdiction.

Finally, by broadly stating that it could find "no constitutional or statutory impediment"¹⁰⁵ to the Florida Act, the Court suggested that the Florida Act did not impede interstate commerce so as to be invalid without regard to federal enactments. Specifically, provisions of the Florida Act which may impede interstate commerce are the financial responsibility requirements and the operational regulations of vessels.¹⁰⁶ The *Askew* Court did not however, specifically analyze the Florida Act in terms of this particular commerce clause objection.¹⁰⁷ Accordingly, since it found no intrusion into the exclusive domain of federal admiralty jurisdiction, no direct conflict with federal enactments, and no preemption by federal enactments, the Court upheld the Florida Act as constitutional.

An analysis of the *Askew* decision suggests that the Court regrettably departed from precedent in testing the validity of the Florida Act under the admiralty clause. The Court determined that a state may provide a remedy for tortious conduct occurring within the traditional scope of the federal admiralty jurisdiction, *i.e.*, for torts occurring on navigable waters. This determination in *Askew* sanctions state legislation in the admiralty domain so long as such legislation does not affect the legal relationship between a vessel and its crew. As noted above,¹⁰⁸ earlier Supreme Court decisions have found state wrongful death actions constitutionally permissible,

¹⁰⁴ 33 U.S.C. § 1161(o)(2) (1970).

¹⁰⁵ 411 U.S. at 328.

¹⁰⁶ See note 4 *supra*.

¹⁰⁷ The Court's implicit finding might be challenged through an assertion that Florida's imposition of operating and financial responsibility requirements impedes interstate commerce, considered apart from any federal legislation. Hence, it might be argued that the Florida Act requirements, as applied to vessels, liken the *Askew* decision to those cases involving state-imposed requirements on railroads. See text at notes 89-90 *supra*. However, to rebut such an assertion, the contention could be made that the WQIA specifically contemplates state regulation of such vessels. See 33 U.S.C. § 1161(o) (1970). If such a contention were adopted, the WQIA could be viewed as establishing state regulations as federal law. Accordingly, in light of the *Gibbons* decision, state legislation of a subject of interstate commerce could be considered constitutional. See text at note 83 *supra*.

¹⁰⁸ See text following note 73 *supra*.

which actions were technically survival statutes that "kept alive" an employee's claim against an employer despite the employee's death and permitted the estate or next of kin to prosecute the claim.¹⁰⁹ In addition, a comparison of prior cases has revealed that state remedial legislation was constitutional if it did not impose a standard of liability less strict than negligence or require one within the admiralty domain to meet financial responsibility requirements.¹¹⁰

The change enunciated in *Askew* in the determinative criteria has both desirable and undesirable implications. First, the adoption of the vessel-crew relationship as the critical factor in determining the scope of the admiralty clause, and thus its constraints, allows states to develop and apply a standard of liability stricter than that of negligence—the standard used in admiralty law—to vessels. At first glance, different state standards of liability appear permissible, since different state standards would not impede the operation of vessels. By means of comparison, trucks and railroads may be subject to varying state standards of liability for tortious conduct since some states may have adopted comparative negligence standards which might affect these interstate carriers. However, it should be noted that the allowance of differing state standards of liability as applied to vessels will give rise to a situation comparable to that in existence prior to *Erie R.R. v. Tompkins*,¹¹¹ wherein the law applied to the tortious conduct will depend on the choice of state or federal court. In the case of vessels, unlike the situation involving trucks, railroads or planes, where conflict of laws doctrines might be able to mitigate the possibility of results depending on the forum chosen, the presence of an applicable body of federal law—i.e., admiralty law—affords room for the development of a forum-shopping situation.

A second criticism of *Askew* arising from its adoption of the vessel-crew relationship as the determinative factor of the scope of exclusive admiralty jurisdiction centers on the sanction of state financial responsibility requirements imposed on vessels for admiralty clause purposes. In the instant case, the financial responsibility requirement can arguably be supported with reference to the WQIA,¹¹² since the WQIA does not address state cleanup costs, yet it envisions state imposition of liability and responsibility. It might appear anomalous if the WQIA allows a state to impose liability yet fails to allow the state to insure recovery. A narrowing of the *Jensen* decision to factual situations involving the vessel-crew relationship carries the implication that after *Askew* in other contexts—as, for example, that of insuring payment of wrongful death claims—states may impose financial responsibility requirements on

¹⁰⁹ See text at notes 55, 57, 61, 69 and 73 *supra*.

¹¹⁰ See text following note 73 *supra*.

¹¹¹ 304 U.S. 64 (1938).

¹¹² See text at note 99 *supra*. The authorization of financial responsibility by the WQIA may be asserted to be unconstitutional. See text following note 104 *supra*.

subjects of admiralty jurisdiction so long as the vessel-crew relationship is not breached and the application of state police power can be justified. Such a result might be undesirable, since states may have differing insurance standards and satisfaction of the standards of one state may be unsatisfactory to another state. Thus, ships may be subjected to undue burdens when they are involved in interstate activities.

The *Askew* decision has a positive effect to the extent that it employs the crew-vessel relationship as determinative of the scope of federal admiralty jurisdiction in respect to the remedies available to crew members. Under *Askew*, crew members are still relegated to their remedy in admiralty, and, thus, the limitation espoused in *Askew* avoids the forum-shopping problem sought to be eliminated by *Erie*. Additionally, the opinion can be endorsed because states normally lack the necessary interest to justify the *Erie* problem in the area of vessel-crew relations unless a crew member is a citizen of the particular state. However, it is submitted that the Court might have avoided the several aforementioned¹¹³ undesirable results by adopting a more restrictive reading of the admiralty clause restrictions on states providing remedies for tortious activity within the traditional confines of admiralty jurisdiction. By interpreting the *Jensen* decision more broadly and therefore denying the validity of, at least, those provisions of the Florida Act which substantively lessen the federal standard of liability or impose financial responsibility requirements on matters within the federal admiralty jurisdiction, the Court would have avoided both the potential *Erie* problem and the potential problem pertaining to varying state financial responsibility requirements.

In conclusion, the *Askew* Court held the Florida Act to be constitutionally permissible state legislation under the admiralty clause. The Court limited *Jensen* and its progeny to those situations affecting the legal relationship between a vessel and its crew. Such a narrow reading of *Jensen* may result in a proliferation of state legislation with varying standards of liability which will undoubtedly undermine the uniformity and harmony of admiralty law in the tort area, and may engender forum-shopping to take advantage of differing state and federal remedies for the tort of oil pollution. Further, such a narrow reading of *Jensen* may permit varying state financial responsibility requirements to be imposed upon those engaged in maritime activities. The narrow reading might thereby subject vessels to undue burdens in their interstate or foreign activities. It is submitted that the *Askew* Court could have avoided this possible invasion of the harmony and uniformity in the admiralty domain by a broader reading of the traditional constraints emanating from the admiralty clause.

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¹¹³ See text at notes 109-11 *supra*.