ADMIRALTY—SOVEREIGN IMMUNITY—PHILLIPINE CORPORATION'S SUIT TO RECOVER DAMAGES CAUSED BY COLLISION WITH PUBLIC VESSEL MAY PROCEED ONLY UNDER JURISDICTION OF THE PUBLIC VESSELS ACT, AND MAY BE BARRED BY THAT ACT'S RECIPROCITY PROVISION.

United Continental Tuna, a Phillipine corporation, sued the United States in the United States District Court for the Central District of California to recover damages incurred when its fishing vessel, the *M. Vital Orient*, sank after colliding with a United States naval destroyer, the *U.S.S. Parsons*. Jurisdiction was alleged in the district court under both the Suits in Admiralty Act[1] and the Public Vessels Act.[2] Since the Naval destroyer involved was a "public vessel of the United States," the district court, upon the government's motion for summary judgment, found United Tuna's claim to be governed exclusively by the Public Vessels Act.[3] In particular, the court held United Tuna subject to the Act's reciprocity provision which bars any foreign national from bringing suit under the Act unless it appears that his government, "under similar circumstances, allows nationals of the United States to sue in its courts."[4] In the absence of a demonstration of the necessary reciprocity by United Tuna, the district court dismissed the complaint. The Court of Appeals for the Ninth Circuit reversed[5] on the basis of a literal interpretation of a 1960 amendment to the Suits in Admiralty Act which deleted language restricting jurisdiction under the Act to incidents involving vessels "employed as merchant vessels" by the United States.[6] Persuaded by the modern policy of interpret-

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[1] 46 U.S.C. §§ 741-52 (1970).

[2] 46 U.S.C. §§ 781-90 (1970).

[3] The Public Vessels Act, *id.* § 781, provides:

> A libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States: *Provided*, that the cause of action arose after the 6th day of April 1920.

[4] The reciprocity requirement applicable to suits by nationals of foreign governments specifies:

> No suit may be brought under sections 781 to 790 of this title by a national of any foreign government unless it shall appear to the satisfaction of the court in which suit is brought that said government, under similar circumstances, allows nationals of the United States to sue in its courts.

Id. § 785.

[5] 499 F.2d 774 (9th Cir. 1974).

[6] Before 1960 suits involving public vessels could not be maintained under the Suits in Admiralty Act. The Act then authorized suits involving vessels owned, possessed, or operated by or for the United States as follows:

> In cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of commencement of the action herein provided for, a libel in personam may be brought against the United States . . . *provided that such vessel is employed as a merchant vessel* . . . .

ing waivers of sovereign immunity liberally,[7] the Court of Appeals permitted United Tuna to proceed under the Suits in Admiralty Act without regard to the reciprocity provision of the Public Vessels Act. The Supreme Court granted certiorari.[8] *Held*, reversed. As the 1960 Suits in Admiralty Act amendment was not intended to and does not affect jurisdiction under the Public Vessels Act, the Phillipine corporation's suit to recover damages caused by a collision with a "public vessel" on the high seas fell exclusively within the jurisdiction of the Public Vessels Act and was barred by failure to meet that Act's reciprocity provision. *United States v. United Continental Tuna Corp.*, 96 S. Ct. 1319 (1976).

Prior to 1916 private persons whose vessels or cargo were damaged by vessels owned or operated by the United States were barred from suit by the doctrine of sovereign immunity.[9] Congress partially abated this inequity by by enacting the Shipping Act of 1916[10] which provided that Shipping Board vessels[11] employed by the United States as merchant vessels would be subject to "all laws, regulations, and liabilities governing mer-

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46 U.S.C. § 742 (1958) (emphasis added). In 1960 Congress amended this provision of the Suits in Admiralty Act by deleting the proviso, italicized above, that the vessel must be "employed as a merchant vessel." 74 Stat. 912 (1970).

[7] The Court of Appeals states, "[f]inally, we note that our conclusion is consonant with the modern view which liberally construes waivers of governmental immunity." 499 F.2d at 778, *citing* Gulf Oil Corp. v. Panama Canal Co., 407 F.2d 24, 28 (5th Cir. 1969).

[8] 420 U.S. 971 (1975).

[9] The United States government, in the absence of statute, is not responsible to private individuals either in tort or in contract. *See* Kawananakoa v. Polyblank, 205 U.S. 349, 353 (1906); Haycroft v. United States, 89 U.S. (22 Wall.) 81, 92 (1874); Reeside v. Walker, 52 U.S. (11 How.) 271, 289 (1850). Neither can property in the government's possession be made the object of direct legal proceedings in the absence of waiver of sovereign immunity. Briggs v. The Light Boats, 93 Mass. (11 Allen) 157 (1865) (dictum). This inequity was mitigated before 1916 by the Congress by Act of June 17, 1910, 36 Stat. 537, and Act of June 24, 1910, 36 Stat. 607, which gave authority to the Secretary of Conmerce to adjust collision claims for which vessels of the Lighthouse Service shall be found responsible, and to the Secretary of the Navy in cases involving Navy vessels, not exceeding the amount of $500 in either case.

[10] 46 U.S.C. § 808 (1970).

[11] The United States Shipping Board, created by the Shipping Act of 1916, *supra* note 10, was composed of five members appointed by the President. The Board's purpose was twofold. First, it was to administer the development and creation of a naval auxiliary, a naval reserve and a merchant marine to meet the escalating requirements of the United States' commerce with its territories, possessions and foreign countries. Secondly, the Board would regulate carriers by water engaged in the foreign and interstate commerce of the United States.

Shipping Board Merchant vessels (as compared to public vessels which come under the Public Vessels Act) were those vessels purchased, chartered or leased from the Board by private citizens under the Shipping Act of 1916. The Act provided that such vessels

> [w]hile employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein.

46 U.S.C. § 808 (1970).

chant vessels. . . ."[12] Three years later, in *The Lake Monroe*[13] the Supreme Court held that the 1916 Shipping Act subjected all Shipping Board merchant vessels to proceedings in rem in admiralty, including arrest and seizure.[14] Congressional concern that the efficient operation of those vessels would be jeopardized soon arose,[15] and prompted passage of the Suits in Admiralty Act in 1920.[16] That Act prohibited in rem proceedings as well as the arrest and seizure of any vessel owned or operated by the United States.[17] Instead, it authorized a libel in personam in cases involving merchant vessels, if suit could have been maintained had the vessel been a private one, and "provided that such a vessel is employed as a merchant vessel [by the United States].[18] Notably, owners of vessels or cargo damaged by public vessels such as naval warships obtained no relief under this Act,[19] and their only recourse continued to be application to Congress for a private bill.

Five years later Congress capitulated to demands for relief by the owners of vessels or cargo damaged by public vessels and passed the Public Vessels Act[20] which permitted claims against the United States for damages caused by public vessels.[21] Framed in such a way that an action proceeding under it would be governed in part by the Suits in Admiralty Act, the Public Vessels Act provided that suits involving public vessels "shall be subject to and proceed in accordance with the provisions of the [Suits in Admiralty Act] or any amendment thereof, insofar as the same are not inconsistent herewith . . . ."[22] However, the Public Vessels Act did not put libelants with suits involving public vessels on an equal footing with libelants bringing claims involving merchant vessels. Due to the Act's provisions prohibiting the subpoena of officers and crew members of public vessels,[23] barring recovery of prejudgment interest,[24] and imposing a re-

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[12] *Id.*

[13] 250 U.S. 246 (1919).

[14] An excellent discussion of the comparative international tenor of United States amenability to suit after passage of the Shipping Act is found in Borchard, *Government Liability in Tort*, 34 YALE L.J. 1, 34, 41 (1924) [hereinafter cited as Borchard].

[15] *See* S. Rep. No. 223, 66th Cong., 1st Sess. (1919); H.R. Rep. No. 497, 66th Cong., 2d Sess. (1919).

[16] 46 U.S.C. §§ 741-52 (1970).

[17] *Id.*

[18] *Id.* § 742.

[19] A suggestion was made that Congress should include in the Suits in Admiralty Act authorization for suits against the United States arising out of incidents involving public vessels. In committee, this proposal was rejected as presenting a "radical change" in policy which might "materially delay passage" of the Act. H.R. Rep. No. 497, 66th Cong., 1st Sess. 4 (1919).

[20] 46 U.S.C. § 781 (1970).

[21] *Id.*

[22] *Id.* § 782.

[23] Officers and crew members of a public vessel may not be subpoenaed in connection with

quirement of reciprocity,[25] claimants proceeding under the Suits in Admiralty Act, which lacked these limiting provisions, stood to gain more favorable judgments.[26]

These statutory waivers of sovereign immunity paralleled provisions in similar legislation by other nations,[27] and were lauded as progressive advances in principle.[28] But in combination with the Tucker Act,[29] which granted partial jurisdiction for maritime claims to the Court of Claims,[30] the admiralty acts proved troublesome in practice. The maritime claimant was confronted with a patchwork of overlapping bases of federal statutory jurisdiction in which he was required to present his claim.[31] The Suits in Admiralty Act and the Public Vessels Act authorized suits on the admiralty side of district courts, and were viewed as providing the exclusive remedy for claims within their coverage.[32] Maritime tort claims not falling

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any suit authorized by the Public Vessels Act without the consent of the Secretary of the Department, the commanding officer, or other specified persons. *Id.* § 784.

[24] Unlike the Suits in Admiralty Act, interest on judgments does not accrue prior to the time of judgment under the Public Vessels Act. *Compare* 46 U.S.C. § 745 (1970) *with* 46 U.S.C. § 782 (1970).

[25] Note 4 *supra*.

[26] In practice, the actual pecuniary difference in the judgment recoverable under the Suits in Admiralty Act in contrast with that recoverable under the Public Vessels Act may be slight, assuming that one has avoided the harsh consequences of being barred from suit by the Public Vessels Act reciprocity provision. For example, the amount of prejudgment interest awardable under the Suits in Admiralty Act (but unavailable under the Public Vessels Act) is usually not large, and the award is discretionary in any event. Reiss S.S. Co. v. U.S. Steel Corp., 427 F.2d 1152, 1153 (6th Cir. 1970); Gardner v. The Calvert, 253 F.2d 395, 402 (3rd Cir. 1958).

The only advantage to proceeding under the Public Vessels Act lies in its broader venue provision. Both admiralty acts provide venue in the district in which the vessel or cargo is found, and in the district in which any plaintiff resides or has a place of business (under the Suits in Admiralty Act it must be the principal place of business in the United States). 46 U.S.C. §§ 742, 782 (1970). In addition, the Public Vessels Act provides that if there is no such district, suit may be brought in *any* district in the United States. 46 U.S.C. § 782 (1970).

[27] Congressional recognition that the foremost maritime nations, including England, France and Germany, had already permitted their nationals and foreigners to sue for damages caused by public vessels gave impetus to enactment of the Public Vessels Act. *See* H.R. Rep. No. 913, 68th Cong., 1st Sess. 5-6, 15-16 (1924); S. Rep. No. 941, 68th Cong., 2d Sess. 5-6, 15-16 (1925); 66 Cong. Rec. 2088 (1925) (remarks of Rep. Underhill).

[28] Borchard, *supra* note 13, at 34.

[29] 28 U.S.C. § 1346(a)(2) (1970). The Tucker Act was originally passed in 1887. 24 Stat. 505 (1887). *See* Dooley v. United States, 182 U.S. 222 (1901) for a discussion of the Act. The Act has been codified and can be found in scattered sections of 28 U.S.C. (§§ 1346, 1491-4, 1501, 1503, 2071-72, 2401, 2411-2, 2501, 2506, 2509-11).

[30] 28 U.S.C. § 1491 (1970).

[31] *See* Amell v. United States, 384 U.S. 158, 160 (1966).

[32] 46 U.S.C. § 745 (1970) states in part:

> *Provided*, that where a remedy is provided by this chapter it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent or employee of the United States or of any incorporated or unincorporated agency

within either Act could be brought only on the law side of the district courts under the Federal Tort Claims Act.[33] Contract claims not encompassed by either admiralty act fell within the Tucker Act, which granted original jurisdiction on these claims to the district courts and the Court of Claims concurrently. However, with regard to contract claims exceeding $10,000, the Tucker Act granted exclusive jurisdiction to the Court of Claims.[34] This jurisdiction confusion created problems for the libelant with a contract claim against the United States for more than $10,000 who had to determine whether to proceed in the district court under one of the admiralty acts or to proceed in the Court of Claims under the Tucker Act. Cases were not transferable between the district courts and the Court of Claims, so an incorrect assertion of jurisdiction could result in the claim being barred by this limitation once the error was disclosed.[35] Filing simultaneously in both courts was not possible as the Court of Claims had no jurisdiction over any claim that was the subject of a pending suit in any other court.[36] If one originally brought a claim in the district court involving a privately owned vessel and the claim was substantial enough not to be cognizable on the law side of that court, a determination at trial that the private vessel was not employed as a merchant vessel by the United States would relegate the libelant to the Court of Claims under the Tucker Act.[37] This removal of the maritime libelant to a forum generally unfamiliar with admiralty law was as disturbing to the judiciary as it was troublesome for the parties to the suit.[38]

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thereof whose act or omission gave rise to the claim . . . .

See Aliotti v. United States, 221 F.2d 598 (9th Cir. 1955); Johnson v. Shipping Board Emergency Fleet Corp., 280 U.S. 320 (1930).

[33] 28 U.S.C. §§ 1291, 1346, 1402, 1504, 2116, 2401-2, 2411-2, 2671-80 (1970). *See* § 1346(b) (jurisdiction) and §§ 2671-80 (procedure). Note that in § 1346(a)(2) the Federal Tort Claims Act incorporated part of the Tucker Act.

[34] 28 U.S.C. § 1346(a)(2) (1970) provides:

> The district courts shall have original jurisdiction, concurrent with the Court of Claims of:
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> (1) . . .
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> (2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department; or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. . . .

[35] The consequences of a wrong filing were most harsh when suit was incorrectly brought in the Court of Claims under the Tucker Act, which has a six year statute of limitations. 28 U.S.C. § 2401(a). The Suits in Admiralty and Public Vessels Acts have two year limitation periods. 46 U.S.C. §§ 745, 782 (1970).

[36] 28 U.S.C. § 1500 (1970). *See* Wessel, Duval & Co. v. United States, 124 F. Supp. 636, 638 (Ct. Cl. 1954).

[37] The pertinent portions of The Tucker Act grant exclusive jurisdiction of civil actions exceeding $10,000 to the Court of Claims. *See* note 28 *supra*, §§ 1346(c)(2), 1491.

[38] The uncertainty concerning the jurisdictional scope of the Suits in Admiralty Act and the Public Vessels Act on the one hand, and the Tucker Act on the other is illustrated in

The confusion over the proper forum for a maritime claim against the United States prompted Congress to amend the Suits in Admiralty Act in 1960.[39] In that year, the Senate Committee on the Judiciary accepted a proposed House amendment that would permit transfer of suits between the Court of Claims and the district court,[40] but called for further

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Calmar S.S. Corp. v. United States. 345 U.S. 446 (1953). There, the private owner of a chartered steamship brought suit for additional charter hire and for the loss of his vessel which had been bombed by enemy airplanes while carrying military materiel. The question presented was whether the vessel, "undoubtedly 'operated . . . for the United States,' was 'employed as a merchant vessel' within the meaning of the [Suits in Admiralty Act] while carrying military supplies and equipment for hire." *Id.* at 447. The district court held that it was a merchant vessel, and assumed jurisdiction under the Suits in Admiralty Act. 103 F. Supp. 243 (S.D.N.Y. 1951). The Court of Appeals reversed, on the ground that while the vessel could have been employed as a merchant vessel under its charter, it was not so employed while transporting war materiel. 197 F.2d 795 (2d Cir. 1952). After having successfully argued to the Court of Appeals that the suit was not cognizable under either the Suits in Admiralty Act or the Public Vessels Act, the government reversed its position before the Supreme Court, advocating jurisdiction under the Suits in Admiralty Act. The Supreme Court accordingly held that the vessel was employed within the province of the Suits in Admiralty Act, and that the type of cargo in transport was immaterial. The Court seemed particularly aware that a contrary ruling would have relegated the libelant to the Court of Claims. The opinion stated: "[T]he District Courts are, in our judicial system, the accustomed forum in matters of admiralty; everything else being equal, no efforts should be made to divert this type of litigation to judges less experienced in admiralty." 345 U.S. at 455.

[39] The Senate Committee noted that the holdings in some cases were contrary to the results reached in others on essentially identical facts. S. Rep. No. 1894, 86th Cong., 2d Sess., 3 (1960), *reprinted in* [1960] U.S. CODE CONG. & AD. NEWS 3583 [hereinafter cited as Senate Report]. For example, in Eastern S.S. Lines, Inc. v. United States, 187 F.2d 956 (1st Cir. 1951), the Court of Appeals affirmed the dismissal of a vessel owner's contract claim against the United States for the amount required to reconvert its vessel into a cargo and passenger ship after the Army used it for troop transport and hospital services. The Court of Appeals held that the Suits in Admiralty Act had no application because the Army had not employed the vessel as a merchant vessel. Also, in Continental Casualty Co. v. United States, 156 F. Supp. 942 (Ct. Cl. 1957), the Court of Claims held that a suit on a contract for the repair of a vessel that had been out of service for several years was not controlled by the Suits in Admiralty Act, because at the time the repairs were made, "the vessel was not employed at all," and therefore it was not properly "employed as a merchant vessel." *But see* Aliotti v. United States, 221 F.2d 598, 602 (9th Cir. 1955), where the Court commented on the *Eastern S.S. Lines, Inc.* decision *supra*; "No purpose would be served by discussion of that decision, though to say that it is at variance with the views prevailing in this circuit." *See also* Sinclair Refining Company v. United States, 124 F. Supp. 628 (Ct. Cl. 1954), where the owner of a transfer fleet sued the United States as charterer of his tankers under bareboat charters to recover an alleged amount due under war risk insurance policies, wages and subsistence, off-hire credits, and expenses incurred while liquidating the business and accounts of the tankers. The Court of Claims held that the federal district court under the admiralty acts had jurisdiction, and not the Court of Claims.

[40] Amendment of the Suits in Admiralty Act was set into motion in 1958. In that year the House passed a bill, H.R. 3046, 85th Cong., 2d Sess., which did not emerge from the Senate Committee on the Judiciary before expiration of the 85th Congress. It was, however, identical to the bill passed by the House of Representatives in 1959 and considered by the Senate Committee on the Judiciary in drafting the 1960 amendment.

changes.[41] As defined by the committee,

> The purpose of the amendments is to make as certain as possible that suits brought against the United States for damages caused by vessels and employees of the United States through breach of contract or tort can be originally filed in the correct court so as to proceed to trial promptly on their merits.[42]

In final form, the 1960 amendment was framed so as to clarify the jurisdictional language of the Suits in Admiralty Act, while expanding the scope of that Act at the expense of the Tucker Act.[43] In an effort to dispel any judicial uncertainty, the amendment made two modifications.[44] First, it added language authorizing suits against the United States where a suit would be proper "if a private person or property were involved."[45] Sec-

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[41] The Senate Committee on the Judiciary commented on the 1959 House bill: "The transfer bill would operate to prevent ultimate loss of rights of litigants, but it did nothing to eliminate or correct the cause of original erroneous choices of forum while it could increase the existing delays." Senate Report, *supra* note 39, at 6 [1960] U.S. CODE CONG. & AD. NEWS 3587.

[42] *Id.* at 2 [1960] U.S. CODE CONG. & AD. NEWS 3583.

[43] In Amell v. United States, 384 U.S. 158 (1965), the Supreme Court considered the legislative purpose of the 1960 Suits in Admiralty Act amendment:

> In 1960, Congress addressed itself to the jurisdictional overlap between the Tucker Act and the Suits in Admiralty Act. . . . In amending the Suits in Admiralty Act, Congress also wanted to affirm the existing law that suits which were justiciable exclusively under it would be brought only in the district courts. The new § 2 of the Act, 46 U.S.C. § 742, in the words of the Senate Report, S. Rep. No. 1894, *supra*, at p. 2.
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> > 'restates in brief and simple language the now existing exclusive jurisdiction conferred on the district courts, both on their admiralty and law sides, over cases against the United States which could be sued on in admiralty if private vessels, persons, or property were involved.'

384 U.S. at 164-65.

[44] The 1960 amendment made other changes which received thorough treatment in 10 TEX. INT'L L.J. 561 (1975).

[45] 46 U.S.C. § 742 (1970). Prior to the 1960 amendment, § 742 provided in part:

> In cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against any corporation mentioned in section 741 of this title, as the case may be, provided that such vessel is employed as a merchant vessel or is a tugboat operated by such corporation.

Confusion had been caused by this earlier wording which had required that the vessel be employed as a merchant vessel and authorized suits against the United States only when suits would be maintainable if the "vessel" or "cargo" were privately owned, operated, or possessed. Senate Report, *supra* note 39, at 5; [1960] U.S. CODE CONG. & AD. NEWS 3583. For example, in Ryan Stevedoring Co. v. United States, 175 F.2d 490 (2d Cir. 1949), the Court of Appeals considered an interlocutory appeal on whether a libel in personam under an indemnity contract could be brought against the United States under the Suits in Admiralty Act where inflamable cargo on a loading dock exploded causing damage to a nearby derrick, the owner of which obtained recovery from the libelant, Ryan Stevedoring Co. After reviewing

ondly, the amendment deleted the jurisdictional language which had specified that a libel could only proceed against a vessel that had been "employed as a merchant vessel."[46]

The Supreme Court in the *United Tuna* decision focuses on this second aspect of the 1960 amendment. Several lower courts, including the Ninth Circuit Court of Appeals in the instant case, had construed the amendment literally.[47] The deletion of the language limiting the Act's jurisdiction to suits involving a vessel "employed as a merchant vessel" by the United States was interpreted by these courts as eliminating the "merchant vessel—public vessel" dichotomy of the admiralty acts. These courts assumed, as for example the Ninth Circuit did below in *United Tuna*,[48] that

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the applicability of the Federal Tort Claims Act and the Tucker Act, the court held that Ryan could not recover from the United States under the Suits in Admiralty Act since the cargo was not directly connected with the government's ownership and operation of a vessel. *Compare* Lykes Bros. SS. Co. v. United States, 124 F. Supp. 622 (Ct. Cl. 1954), where the Court of Claims held that suits seeking contribution for rescue expenditures by owners of vessels against the United States, as owner of partial cargoes, could not be maintained in the Court of Claims under the Tucker Act, and the owner's only recourse was to proceed in federal district court under the Suits in Admiralty Act.

[46] 46 U.S.C. § 742 (1970). The amended jurisdictional language of § 742 now provides in part:

> In cases where if such vessel were privately owned or operated, or if such cargo were privately owned or possessed, or if a private person or property were involved, a proceeding in admiralty could be maintained, any appropriate nonjury proceeding in personam may be brought against the United States or against any corporation mentioned in section 741 of this title.

[47] In Ira S. Bushey & Sons, Inc. v. United States, 398 F.2d 167 (2d Cir. 1968), an intoxicated Coast Guard seamen living aboard a Coast Guard vessel in dry dock opened the dry dock's floodgate value, causing the dry dock to sink. The court stated that the 1960 amendment to 46 U.S.C. § 742 was intended to bring all maritime claims against the United States vessels into the admiralty jurisdiction of the Federal district courts. *Accord*, T.J. Falgout Boats, Inc. v. United States, 361 F. Supp. 838 (C.D. Cal. 1972), where the court states: "The Suits in Admiralty Act constitutes the exclusive remedy available to litigants injured by a maritime tort." *Id.* at 842. *See also* Amell v. United States, 384 U.S. 158, 159 (1960), where Chief Justice Warren delivered the opinion of the court with these opening remarks:

> The case before us presents interesting problems of a jurisdictional nature. The Suits in Admiralty Act vests exclusive jurisdiction in the district courts when the suit is of a maritime nature. Under the Tucker Act, the Court of Claims has jurisdiction over contractual claims against the United States. This jurisdictional interaction presents itself here.

384 U.S. at 159 (footnotes omitted).

[48] 499 F.2d at 777. The court stated:

> Notwithstanding the many ambiguities inherent in this legislative action, the majority of courts considering the 1960 amendments have interpreted the [Suits in Admiralty Act] as presently encompassing all maritime claims against the United States, regardless of the type of vessel involved. *See, e.g.*, Ira S. Bushey & Sons, Inc. v. United States, 398 F.2d 167, 169 (2d Cir. 1968); *T.J. Falgout Boats, Inc. v. United States*, 361 F. Supp. 838, 841, 842 (C.D. Cal. 1972); *Richmond Marine Panama, S.A. v. United States*, 350 F. Supp. 1210, 1219-1221 (S.D.N.Y. 1972). . . .

suits involving public vessels which previously were cognizable only under the Public Vessels Act could now proceed under the Suits in Admiralty Act, free from the restrictive provisions of the Public Vessels Act. The Supreme Court's dictum in the 1965 case of *Amell v. United States*[49] regarding the amendment appears to be in accord with these decisions: "In 1960, Congress addressed itself to the jurisdictional overlap between the Tucker Act and the Suits in Admiralty Act. Simultaneously, Congress abolished the distinction between public and merchant vessels, a matter which had sorely confused attorneys and had caused misfilings in the past, . . ."[50] Apparently the Court did not intend what this dictum expresses on its face because the Court has never treated the distinction as having been abolished.

In *United Tuna* the Court engages in a thorough review of the legislative history of the 1960 amendment. Nevertheless, Justice Marshall in the opinion of the Court only acknowledges the *Amell* dictum in a footnote, concluding that the amendment was intended to reduce the jurisdictional uncertainty as between the district courts and the Court of Claims, not to alter the existing jurisdictional scheme of the Suits in Admiralty Act and the Public Vessels Act.[51] The decision of the Court clearly comports with the congressional purpose. Permitting libelants injured by public vessels to enjoy the more favorable judgments available under the Suits in Admiralty Act would, as the Court observes, "effectively nullify specific policy judgments made by Congress when it enacted the Public Vessels Act. . . ."[52]

The lower court had suggested that modern policy urging a liberal construction of waivers of sovereign immunity would support a construction of the 1960 amendment that would allow libelants injured by public vessels

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[49] 384 U.S. at 164.

[50] *Id.*

[51] 96 S. Ct. at 1327 n. 16, stating, "We do not view the dictum in *Amell v. United States*, 384 U.S. 158, 164 . . . (1966), as requiring a result different from the one we reach today." The Court does not mention the opening statement by Chief Justice Warren, *supra* note 46, to the effect that after the 1960 amendment all maritime tort claims have been encompassed by the Suits in Admiralty Act. Justice Stewart, dissenting, recounts this *Amell* dictum, 96 S. Ct. at 1329 n. 1, and urges upholding the appellate decision on the basis that "[t]he plain language of the Suits in Admiralty [sic] authorizes anyone to sue the United States for damages caused by any U.S. vessel." *Id.* at 1330. Justice Stewart refers to the brief for the United States submitted in *Amell* which reviewed the purpose of the 1960 amendment. That brief concluded, "Thus, the Suits in Admiralty Act now extends to government public as well as merchant vessels." *Id.* at 1329. Justice Stewart then states in a footnote that the Supreme Court had adopted the government's position, setting out the *Amell* dictum: "In 1960. . . Congress abolished the distinction between the public and merchant vessels, a matter which had sorely confused attorneys . . . ." 96 S. Ct. at 1329-30 n. 1, *quoting* Amell v. United States 384 U.S. 158, 164 (1965).

[52] *Id.* at 1329. The Court makes a number of separate references to the House and Senate reports.

to proceed under the Suits in Admiralty Act, thereby avoiding the restrictive provisions of the Public Vessels Act.[53] Reliance on this policy in the context of positive statutory law would be unfounded.[54] Quite appropriately, the Supreme Court has repeatedly refused to read into statutes authorizing governmental amenability to suits any waiver of immunity beyond that expressly granted.[55] Accordingly, the *United Tuna* Court deferred to the original legislative intent representing a legislatve policy discriminating against libelants suing for damages caused by public vessels.[56] The decision therefore assures that if government amenability to suits arising out of incidents involving public vessels is to be extended by the United States, it will not be expanded by judicial construction. The focusing of the Court on the differences between the underlying policies of the two acts revokes the precedent for circumvention of the restrictive provisions of the Public Vessels Act. As a result of this decision the "merchant vessel—public vessel" dichotomy is recognized as the determinant of jurisdiction under the Acts.

The effect of the decision for the maritime libelant may not be so sweeping. Justice Stewart, dissenting, argues that the significance of proceeding under either of the admiralty acts, in terms of the final judgment award, will usually be negligible.[57] But as illustrated by this refusal to allow suit by the libelant in *United Tuna* for failure to show reciprocity between the Phillipines and the United States, the consequences can be extreme for one who runs afoul of the restrictive provisions of the Public Vessels Act.

B. Randall Blackwood

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[53] 499 F.2d at 778.

[54] As noted by the *United Tuna* Court:

> In short, Congress saw confusion between the category of suits cognizable under the Suits in Admiralty Act or Public Vessels Act on the one hand, and the category of suits cognizable under the Tucker Act on the other. It attempted to eliminate the confusion between these two categories by expanding the scope of the Suits in Admiralty Act at the expense of the Tucker Act—thereby virtually eliminating the quasi-admiralty jurisdiction of the Court of Claims under the Tucker Act. But *Congress did nothing to alter the distinction between the Suits in Admiralty Act and the Public Vessels Act, or expand the one at the expense of the other.*

96 S.Ct. at 1328 (emphasis added).

[55] *See* Keifer & Keifer v. R.F.C., 306 U.S. 381 (1939), in which Mr. Justice Frankfurter gives a scholarly treatment of government immunity from suit prior to World War II. He observes: "Congress may, of course, enclose a governmental corporation with the government's immunity. But always the question is: has it done so? Federal Land Bank v. Priddy, 295 U.S. 229, 231." *Id.* at 389.

[56] Inclusion of government amenability to suit from collisions involving public vessels would possibly have delayed passage of the Suits in Admiralty Act as it represented a "radical change" in policy. H.R. Rep. No. 497, 66th Cong., 1st Sess. 4 (1919).

[57] *See* Justice Stewart's dissenting opinion, 96 S. Ct. at 1330 n. 2, where he discusses the practical impact of the *United Tuna* decision.