CASES AND MATERIALS
ON
MARITIME PERSONAL INJURY AND DEATH

By

Gus A. Schill, Jr.
and
John F. Unger

MARITIME PERSONAL INJURY AND DEATH
TABLE OF CONTENTS

INTRODUCTION

The developments in the contemporary maritime industry have brought about unique maritime personal injury and death situations in the courts, both state and federal, as well as the federal administrative agencies. The diversification, sophistication and complexity of the objects that float have resulted in an ever expanding opportunity for invoking maritime jurisdiction. There are additional reasons for the inconsistent trends in the study of this area of the law. Nineteenth century judicial decisions are not consistent with contemporary social thinking. Congressional legislation resembles a patchwork quilt that often lacks a coherent objective. Inconsistent judicial philosophies struggle within the various courts for dominance, not only in the areas of maritime common law, but also statutory interpretation. Because the choice of judges has become increasingly political, as the political party of the office of the Presidency changes, so will the social philosophies of the judges who are nominated to the three levels of the federal courts. The struggle is essentially the latitude to be given to certain classifications of maritime workers, the legal definitions for various theories of recovery, and the extent of monetary recoveries afforded to each classification.

Over the years, the federal legislature and judiciary have demonstrated their concern for the maritime employee. Seamen, longshoremen, and other shore-side maritime workers, and offshore personnel have been provided remedies under both statutory and general maritime law schemes, some of which are inconsistent. As is evidenced in this text, often the congressional concern for maritime employees is augmented by the expansion of maritime tort duties and the extension of recoverable items of loss by the courts. Unfortunately, statutes and decisions conflict. Also, the Supreme Court occasionally refuses to decide conflicting legal conclusions between the various Circuit Courts of Appeals of this country.

The expansion and contraction of doctrines may be seen in a number of areas involving maritime personal injury litigation. Legal philosophies within various courts change due to the results in American presidential elections. The Congress and the courts appear to expand routes to, and amount of, recovery at one moment, and restrict them later in another factual context or political climate. Although this fluctuation may appear haphazard at best, it does represent the thread that holds this complex and confusing tapestry together.

This text is devoted to a critical analysis of the trends developed by the Congress and the courts in the fashioning of basic maritime duties, the breach of duties, the causal relationship test, and the monetary items of recovery. Parenthetically, the income of lawyers is directly affected. The most difficult area of the analysis will be the classification of workers who might come within the protective scope of legal theories, and the rationale for the exclusion of some personal injury litigants who are subject to similar risks.

Judge John R. Brown of the Fifth Circuit was a proponent for an active judiciary in formulating federal maritime principles, even if a federal statute covered the point. His views are set forth in his last public speech, *Admiralty Judges: Flotsam on the Sea of Maritime Law*, 25 Houston Journal of International Law, 253-299 (2003). *Wallis v. Princess Cruises, Inc.*, 306 F.3d 827 (9th Cir. 2002) sets forth the contemporary view in the following manner:

> We have the authority to develop general maritime law regarding claims not directly governed by congressional legislation or admiralty precedent.

MARITIME PERSONAL INJURY REFERENCE MATERIALS

There are a number of excellent maritime reference sources including:

REPORTERS

American Maritime Cases and Digest-
This reporter is devoted exclusively to maritime law, both cargo and personal injury. While every issue has a digest of the cases it contains, larger digests are printed every five years. Generally, the digest is more detailed than West's Federal Practice Digest and the reporters do contain opinions that are not published in the West reporters. The only disadvantage is that the cases are not published as rapidly as the West reporters.

Benefits Review Board Decisions-
This multi-volume set contains decisions of Administrative Law Judges, the Benefits Review Board, the Circuit courts, and the Supreme Court that deal with the Longshoremen's and Harbor Workers' Compensation Act. One of its volumes contains information concerning the application of the Act by the Department of Labor and legislative histories of the Act and its amendments.

TREATISES

The Law of Seamen, Third Edition, by Martin J. Norris-
This three-volume set is an excellent tool for researching almost any question involving seamen.

The Law of Maritime Personal Injuries, by Martin J. Norris-
A two-volume set devoted primarily to longshoremen's actions which also covers injuries to passengers, wrongful death and products liability.

Benedict's on Admiralty, Seventh Edition-
A multi-volume set which covers numerous maritime topics.

The Law of Admiralty, by Grant Gilmore and Charles L. Black, Jr.-
This is a one-volume "hornbook" on all areas of maritime law. Although its discussions of the law are somewhat dated (it was published in 1974).

Schoenbaum's Admiralty and Maritime Law, by Thomas J. Schoenbaum,

Maritime Law Deskbook by Charles M. Davis A heavily annotated treatise covering many maritime topics.

These texts are available in the Judge John R. Brown Admiralty Collection of the University of Houston Law Center's Library.

JURISDICTION

Article III, Section 2 of the United States Constitution extends the authority of the federal courts to "all cases of admiralty and maritime jurisdiction." In the Judiciary Act of 1789, Congress established the exclusive jurisdiction of the federal courts to admiralty cases; however, the following clause was set forth: "saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it." The apparent intent of this legislation was to allow admiralty cases to be instituted in one of three ways. First, *in personam* and *in rem* maritime cases may be brought on the admiralty docket of the federal courts; no jury is usually permitted. All *in rem* admiralty actions (actions directly against the vessel) must be brought on the admiralty docket in federal court because they do not classify as "a common law remedy" pursuant to the Judiciary Act. Second, maritime *in personam* actions may be brought in federal court with a jury if there is a basis for federal jurisdiction, either diversity of citizenship or federal question. The Supreme Court held in *Romero v. International Terminal Operating Co.*, 358 U.S. 354 (1959) that decisional admiralty matters are not classified as a "federal question" for jurisdictional purposes. Third, under the "saving to suitors" clause, maritime *in personam* actions may be brought in a state court provided the state *in personam* jurisdictional requirements are met. State courts hearing maritime claims may apply state law to the extent that the particular law or judicial concept is not inconsistent with the intent and scope of either an Act of Congress or the general maritime law as developed by the federal courts. As a general rule, however, federal maritime law will be applied in the state court due to the federal interest in maintaining uniformity in maritime activities. *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986); *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406 (1953); *Southern Pacific Steamship Co. v. Jensen*, 244 U.S. 205 (1917); *Texaco Refining & Marketing v. Tran*, 808 S.W.2d 61 (Tex.) *cert. denied*, 502 U.S. 908, 116 L. Ed. 2d 245 (1991).

Cases brought in admiralty pursuant to Rule 9(h) Fed. R. Civ. P. must be tried before a judge. Prior to 1966, these actions were placed on a separate admiralty docket in the federal court, and they were governed by special admiralty rules of procedure. The Admiralty Rules and the Federal Rules of Civil Procedure were unified with admiralty actions in 1966 becoming subject to the new unified rules of civil procedure. Note, there is a section denominated as supplemental admiralty rules, and

they are limited to an admiralty action filed pursuant to Rule 9(h) of the Federal Rules of Civil Procedure. A Rule 9(h) designation invokes the non-jury jurisdiction of the federal court over a maritime claim, irrespective of diversity or amount in controversy questions; the only jurisdictional requirement is a maritime cause of action being set forth in the plaintiff's complaint. *Wingerter v. Chester Quarry Co.*, 185 F.3d 657 (7th Cir. 1999).

The geographic limits of admiralty jurisdiction cover all navigable waters, the high seas, and the inland waterways of the country. In its early development, the admiralty jurisdiction of the U.S. courts, like that of the English, extended solely to the tidal waters. *De Lovio v. Boit*, 7 F. Cas. 418 (C.C.D. Mass. 1815). This restriction to the sea was discarded in the middle of the nineteenth century, and inland navigable rivers and lakes were included within admiralty jurisdiction. *Jackson v. The Magnolia*, 61 U.S. 296 (1857). Inland waters are navigable in fact if they were previously used or are susceptible to use for interstate navigation and commerce. *The Daniel Ball*, 77 U.S. 557 (1870).

The test for admiralty jurisdiction involving tort actions was initially determined by one factor, the location of the tort. If the accident occurred upon navigable waters, the federal court had jurisdiction on the admiralty docket. *De Lovio v. Boit, supra.* This "situs" requirement is no longer the sole criteria in determining whether admiralty jurisdiction exists. To further complicate matters, Congress enacted the Extension of Admiralty Jurisdiction Act, 46 U.S.C.A. § 740, in 1948, extending coverage to accidents caused by a vessel on navigable waters regardless of the specific location of the tort. A vessel striking a wharf is an example of an admiralty action sanctioned by this statute. This congressional action vacated the previous decisions holding that a tort involving a wharf, whether stationary or floating, did not come within the federal court's admiralty jurisdiction. *South Port Marine, L.L.C. v. Gulf Oil Partnership*, 234 F.2d (1st Cir. 2000). The United States Supreme Court further modified admiralty jurisdiction when it held in 1972 that the occurrence of a tort upon navigable waters is not sufficient to establish maritime jurisdiction. In addition to the location of the tort on navigable waters, the Court required a nexus between the tort and traditional

maritime activities involving navigation or commerce on navigable waters. *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249 (1972).

One inference of *Executive Jet* was that the tort must arise from some form of commercial activity; however, this interpretation was modified ten years later in *Foremost Insurance Co. v. Richardson*, 457 U.S. 688 (1982). This case involved the collision of two pleasure boats on the Amite River in Louisiana with the resulting death of a passenger. The Court held that the presence of a significant relationship between the cause of action and traditional maritime activities was sufficient for admiralty jurisdiction; furthermore, these activities need not arise from commercial endeavors.

The Supreme Court in *Sisson v. Ruby*, 497 U.S. 358 (1990), subsequently formulated a two-prong "nexus" test for maritime jurisdiction:

1.) Potential disruption of maritime activity; and

2.) Significant relationship to traditional maritime activity. Traditional relationship in this sense is defined as potential interference with maritime commerce on navigable waters.

The court recognized maritime jurisdiction when a fire broke out on a moored pleasure boat. The fire spread to the marina and surrounding vessels. The court noted a potential disruption of maritime activity plus potential interference with maritime conduct on navigable water. In a well-reasoned concurring opinion, Justice Scalia takes exception to the majority's reading of *Executive Jet* and *Foremost*. He would revert to the original *De Lovio* test of accepting admiralty jurisdiction in every case involving a tort which occurs on a vessel in navigable waters. The "significant relationship" test is met in Justice Scalia's opinion when the tort occurs aboard a vessel on navigable waters. He reasoned that an inquiry into this prong is necessary only for non-vessel related casualties. This much broader test for maritime jurisdiction would make for an easier application, but it was not accepted by the majority of the Supreme Court.

There can be several reasons for a litigant to contest maritime jurisdiction. The contesting party may desire a jury trial or an action in a state court. Also, the statute of limitations might have run by the time the jurisdiction issue is reached; therefore, a plaintiff's action could be time-barred. Additionally, a vessel owner might wish to have the *in rem* action against the vessel dismissed.

A few procedural peculiarities of admiralty jurisdiction must be noted. In regard to the statutory remedies, a seaman's claim under the Jones Act,[1] 46 U.S.C.A. § 30104, may be brought in federal court, either at law with a jury trial or in admiralty without a jury. The word "jurisdiction," as it is used in the Jones Act, is interpreted to mean venue. *Panama Railroad v. Johnson*, 264 U.S. 275 (1924). Such a construction allows Jones Act suits to be brought in the district where the defendant employer resides or in which its principal office is located. Jones Act suits against corporate defendants may be brought in the district in which the corporation is incorporated or in any district in which it is licensed to do business. *Pure Oil Co. v. Suarez*, 384 U.S. 202 (1966); 28 U.S.C. § 1391(c). A Jones Act claim may also be brought in an appropriate state court, with the defendant having no right to remove the case to the federal court due to the Jones Act's explicit statutory preclusion.[2] 28 U.S.C.A. § 1445(a).

Jones Act suits may be joined with claims for vessel unseaworthiness and maintenance and cure,[3] *Romero v. International Terminal Operating Co.*, 358 U.S. 354 1959). The bar to removal of a Jones Act claim equally applies to an appended claim for unseaworthiness, as the latter action is not "a separate and independent claim or cause of action" as per 28 U.S.C. § 1441(c). *Pate v. Standard Dredging Corp.*, 193 F. 2d 498 (5th Cir. 1952). A combined action for maintenance and

---

1 The Jones Act, which provides a remedy for seamen based on the employer's negligence, will be discussed extensively later in this text.

2 The Jones Act's mechanics result from the statutory incorporation by reference to the Federal Employers' Liability Act (FELA).

3 Unseaworthiness and maintenance and cure are remedies which fall under the general maritime law (maritime common law). These subjects will be discussed at length in different sections of the text.

cure, unseaworthiness, and Jones Act recovery may have all aspects of the litigation submitted to a jury if all counts arise out of the same set of facts. *Fitzgerald v. United States Lines Co.*, 374 U.S. 16 (1963).[4]

Most personal injury claims may be brought not only *in personam* in the state or federal court, but also *in rem* against a vessel if commenced on the non-jury admiralty side (i.e. pursuant to Rule 9[h] of the Federal Rules of Civil Procedure) of the federal court. *In rem* actions must be based on a valid maritime lien and, in regard to personal injury/death litigation, must be brought on the admiralty docket of federal court (invoking Rule 9(h)). Since these *in rem* actions can only be brought in federal court based on admiralty jurisdiction, no party is entitled to a jury. *Diesel "Repower," Inc. v. Islander Investments, Ltd.*, 271 F.3d 1318 (11th Cir. 2001).

You will occasionally note a reference to the Saving to Suitors Clause, 28 U.S.C. § 1333. This statute essentially preserves the right of a maritime litigant to the right of jury trials, common law remedies, and the choice of a forum. *U.S. Express Lines, Ltd. v. Higgins*, 281 F.3d 383 (3d Cir. 2002); also the *Romero* concept was acknowledged for the fact that here can be no removal absent diversity or federal question jurisdiction. This clause is considered to be jurisdictional with respect to state courts as opposed to calling for the application of state law in federal maritime matters. *Diesel "Repower," Inc. v. Islander Investments, Ltd.*, 271 F.3d 1318 (11th Cir. 2001). Federal law preempts inconsistent state law. The tension between the Saving to Suitors Clause and admiralty proceedings is most notable in the area of a vessel owner's right to petition the federal court in admiralty seeking exoneration from or limitation of liability. The limitation proceeding denies any party the right to a jury trial. The question focuses upon seeking a middle course between the opposing concepts. *Lewis & Clark Marine, Inc. v. Lewis*, 513 U.S. 438 (2001) reviews this conflict. The Supreme Court held that the trial court in the exercise of its discretion may give a preference to recognizing the plaintiff's initial choice of a forum in the event a vessel owner's right to seek

---

[4] For the effect of pleading admiralty jurisdiction, *see* Comment, *The Jury on the Quarterdeck: The Effect of Pleading Admiralty Jurisdiction When a Proceeding Turns Hybrid*, 63 Tex. L. Rev. 533 (1984).

limitation of liability will be protected. There is a further holding that a non-jury trial before a state court is within the scope of the saving clause. Also, the saving clause cannot prevent the removal of a personal injury action based upon diversity jurisdiction in the event the litigants are foreign nationals; this is possible since there is no Jones Act involvement due to the plaintiff being a foreign crewmember. *Francisco v. M/T STOLT ACHIEVEMENT*, 293 F.2d 270 (5th Cir. 2002).

As mentioned at the beginning of this synopsis of jurisdictional decisions and rules, the Constitution extends the federal court's jurisdiction to "all cases of admiralty and maritime jurisdiction." This jurisdictional grant is limited to proceedings designated as being pursuant to Rule 9(h). Admiralty and maritime theory cannot support jurisdiction on the civil docket with the right for a jury trial; an additional jurisdictional basis, such as a federal statute or diversity must be present. *U.S. Express Lines, Ltd. v. Higgins*, 281 F.3d 383 (3d Cir. 2002); *Hadjipateras v. Pacifica, S.A.*, 290 F.2d 679, 705 (5th Cir. 1961), citing *Romero*. *See also, Wright, Miller & Cooper, Federal Practice and Procedure* (1985), § 3672.

The issue of admiralty jurisdiction is pertinent not only to *in rem* actions, ensuring the absence of a jury trial, and as a necessary ingredient for a vessel owner's Limitation of Liability action, but also in determining the correct statutory remedy to follow in actions against the United States. *Anderson v. United States*, 317 F.3d 1235 (11th Cir. 2003), is an example. Bombs were erroneously dropped from an aircraft that was assigned to the carrier JOHN F. KENNEDY. Mr. Anderson filed his action pursuant to the Federal Torts Claims Act, a statute that does not cover maritime causes of action. Admiralty jurisdiction was found since the aircraft was categorized as being an appurtenance of a vessel. The court also found that the incident had a potential to disrupt maritime commerce, and had a relationship to traditional maritime activity. The plaintiff's action pursuant to the Torts Claims Act was dismissed with the consequence of being time-barred under the proper statute, the Public Vessels Act or the Suits in Admiralty Act. *In accord, Pearce v. United States*, 261 F.3d 643 (6th Cir. 2001) (cannot pursue Federal Tort Claims Act if cause is an admiralty matter; the correct procedure is the Suits in Admiralty Act.)

The crash of an American Airlines Airbus in Queens, New York would have passenger damages decided under maritime law rather than New York law according to *In re Air Crash at Belle Harbor, N.Y.*, 2006 U.S. Dist. LEXIS 27387, 2006 A.M.C. 1340 (2006). While over Jamaica Bay,

federal navigable waters, the vertical stabilizer and rudder separated and fell into the water. Plane crashes in the ocean have traditionally been in the maritime jurisdiction.

EXECUTIVE JET AVIATION v CLEVELAND

409 US 249, 34 L Ed 2d 454, 93 S Ct 493 (1972)

APPEARANCES OF COUNSEL

Phillip D. Bostwick argued the cause for petitioners.

Solicitor General Erwin N. Griswold argued the cause for respondents.

Briefs of Counsel, p 861, infra.

OPINION OF THE COURT

[409 US 250]

Mr. Justice Stewart delivered the opinion of the Court.

On July 28, 1968, a jet aircraft, owned and operated by the petitioners, struck a flock of seagulls as it was taking off from Burke Lakefront Airport in Cleveland, Ohio, adjacent to Lake Erie. As a result, the plane lost its power, crashed, and ultimately sank in the navigable waters of Lake Erie, a short distance from the airport. The question before us is whether the petitioners' suit for property damage to the aircraft, allegedly caused by the respondents' negligence, lies within federal admiralty jurisdiction.

When the crash occurred, the plane was manned by a pilot, a copilot, and a stewardess, and was departing Cleveland on a charter flight to Portland, Maine, where it was to pick up passengers and then continue to White Plains, New York. After being cleared for takeoff by the respondent Dicken, who was the federal air traffic controller at the airport, the plane took off, becoming airborne at about half the distance down the runway. The takeoff flushed the seagulls on the runway, and they rose into the airspace directly ahead of the ascending plane. Ingestion of the birds into the plane's jet engines caused an almost total loss of power. Descending back toward the runway in a semi-stalled condition, the plane veered slightly to the left, struck a portion of the airport perimeter fence and the top of a nearby pickup truck, and then settled in Lake Erie just off the end of the runway and less than one-fifth of a statute mile offshore. There were no injuries to the crew, but the aircraft soon sank and became a total loss.

Invoking federal admiralty jurisdiction under 28

[409 US 251]

USC § 1333(1) [28 USCS § 1333(1)],[1] the petitioners brought this suit for damages in the District Court for the Northern District of Ohio against Dicken and the other respondents,[2] alleging that the crash had been caused by the respondents' negligent failure to keep the runway free of the birds or to give adequate warning of their presence.[3] The District Court, in an unreported opinion, held that the suit was not cognizable in admiralty and dismissed the complaint for lack of subject matter jurisdiction.

Relying primarily on the Sixth Circuit precedent of Chapman v City of Grosse Pointe Farms, 385 F2d 962

1. That section provides:

"The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

"(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."

2. Besides Dicken, the respondents are the City of Cleveland, as owner and operator of the airport, and Phillip A. Schwenz, the airport manager.

3. The petitioners also filed an action against Dicken's employer, the United States, under the Federal Tort Claims Act, 28 USC §§ 1346(b) and 2674 [28 USCS §§ 1346(b) and 2674], asserting the same claim. That action is pending in the District Court for the Northern District of Ohio.

(1967), the District Court held that admiralty jurisdiction over torts may properly be invoked only when two criteria are met: (1) the locality where the alleged tortious wrong occurred must have been on navigable waters; and (2) there must have been a relationship between the wrong and some maritime service, navigation, or commerce on navigable waters. The District Court found that the allegations of the petitioners' complaint satisfied neither of these criteria. With respect to the locality of the alleged wrong, the court stated that "the alleged negligence became operative upon the aircraft while it was over the land; and in this sense

[409 US 252]

the 'impact' of the alleged negligence occurred when the gulls disabled the plane's engines [over the land] . . . . From this point on the plane was disabled and was caused to fall. Whether it came down upon land or upon water was largely fortuitous." Alternatively, the court concluded that the wrong bore no relationship to martime service, navigation, or commerce:

". . . . the conclusion here must be that the operative facts of the claim in this case are concerned with the land-connected aspects of air commerce, namely, the maintenance and operation of an airport located on the land and the dangers encountered by an aircraft when using its runways for take-off."

The Court of Appeals for the Sixth Circuit affirmed on the ground that "the alleged tort in this case occurred on land before the aircraft reached Lake Erie . . . ." 448 F2d 151, 154 (1971). Hence, that court found it "not necessary to consider the question of maritime relationship or nexus discussed by this court in [Chapman]." Ibid. We granted certiorari to consider a seemingly important question affecting the jurisdiction of the federal courts. 405 US 915, 30 L Ed 2d 784, 92 S Ct 941 (1972).

[409 US 253]

I

Determination of the question whether a tort is "maritime" and thus within the admiralty jurisdiction of the federal courts has traditionally depended upon the locality of the wrong. If the wrong occurred on navigable waters, the action is within admiralty jurisdiction; if the wrong occurred on land, it is not. As early as 1813, Mr. Justice Story, on Circuit, stated this general principle:

"In regard to torts I have always understood, that the jurisdiction of the admiralty is exclusively dependent upon the locality of the act. The admiralty has not, and never (I believe) deliberately claimed to have any jurisdiction over torts, except such as are maritime torts, that is, such as are committed on the high seas,

or on waters within the ebb and flow of the tide."

Thomas v Lane, 23 F Cas 957, 960 (No. 13,902) (CC Me). See also De Lovio v Boit, 7 F Cas 418, 444 (No. 3,776) (CC Mass 1815); Philadelphia, W. & B. R. Co. v Philadelphia & Havre de Grace Steam Towboat Co., 23 How 209, 215, 16 L Ed 433 (1860). Later, this locality test was expanded to include not only tidewaters, but all navigable waters, including lakes and rivers. The Genesee Chief v Fitzhugh, 12 How 443, 13 L Ed 1058 (1852).

In The Plymouth, 3 Wall 20, 35, 36, 18 L Ed 125 (1866), the Court essayed a definition of when a tort is "located" on navigable waters:

"[T]he wrong and injury complained of must have been committed wholly upon the high seas or navigable waters, or, at least, the substance and consummation of the same must have taken place upon these waters to be within the admiralty jurisdiction. . . .

. . . . . .

[409 US 254]

". . . The jurisdiction of the admiralty over maritime torts does not depend upon the wrong having been committed upon board the vessel, but upon its having been committed on the high seas or other navigable waters.

". . . Every species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters, is of admiralty cognizance."

The Court has often reiterated this rule of locality.[4] As recently as last Term, in Victory Carriers, Inc. v Law, 404 US 202, 205, 30 L Ed 2d 383, 92 S Ct 418, we repeated that "[t]he historic view of this Court has been that the maritime tort jurisdiction of the federal courts is determined by the locality of the accident and that maritime law governs only those torts occurring on the navigable waters of the United States."

This locality test, of course, was established and grew up in an era when it was difficult to conceive of a tortious occurrence on navigable waters other than in connection with a waterborne vessel.

[409 US 255]

But it is the perverse and casuistic borderline situations that have demonstrated some of the problems with the locality test of maritime tort jurisdiction. In Smith & Son v Taylor, 276 US 179, 72 L Ed 520, 48 S Ct 228 (1928), for instance, a longshoreman unloading a vessel was standing on the pier when he was struck by a cargo-laden sling from the ship and knocked into the water where he was later found dead. This Court held that there was no admiralty jurisdiction in that case, despite the fact that the longshoreman was knocked into the water, because the blow by the sling was what gave rise to the cause of action, and it took effect on the land. Hence, the Court concluded, "[t]he substance and consummation of the occurrence which gave rise to the cause of action took place on land." 276 US, at 182, 72 L Ed 520, 48 S Ct 228. In the converse factual setting, however, where a longshoreman working on the deck of a vessel was struck by a hoist and knocked onto the pier, the Court upheld admiralty jurisdiction because the cause of action arose on the vessel. Minnie v Port Huron Terminal Co., 295 US 647, 79 L Ed 1631, 55 S Ct 884 (1935). See also The Admiral Peoples, 295 US 649, 79 L Ed 1633, 55 S Ct 885 (1935).

4. In Victory Carriers, Inc. v Law, 404 US 202, 205 n 2, 30 L Ed 2d 383, 92 S Ct 418 (1971), we cited over 40 cases to this effect.

Other serious difficulties with the locality test are illustrated by cases where the maritime locality of the tort is clear, but where the invocation of admiralty jurisdiction seems almost absurd. If a swimmer at a public beach is injured by another swimmer or by a submerged object on the bottom, or if a piece of machinery sustains water damage from being dropped into a harbor by a land-based crane, a literal application of the locality test invokes not only the jurisdiction of the federal courts, but the full panoply of the substantive admiralty law as well. In cases such as these, some courts have adhered to a mechanical application of the strict locality rule and have sustained admiralty jurisdiction despite the lack of any connection between the wrong and traditional

[409 US 256]

forms of maritime commerce and navigation.[5] Other courts, however, have held in such situations that a maritime locality is not sufficient to bring the tort within federal admiralty jurisdiction, but that there must also be a maritime nexus—some relationship between the tort and traditional maritime activities, involving navigation or commerce on navigable waters. The Court of Appeals for the Sixth Circuit, for instance, in the Chapman case, where a swimmer at a public beach was injured, held that

> "[a]bsent such a relationship, admiralty jurisdiction would depend entirely upon the fact that a tort occurred on navigable waters; a fact which in and of itself, in light of the historical justification for federal admiralty jurisdiction, is quite immaterial to any meaningful invocation of the jurisdiction of admiralty courts." 385 F2d, at 966.[6]

Despite the broad language of cases like The Plymouth, 3 Wall 20, 18 L Ed 125 (1866), the fact is that this Court has never explicitly held that a maritime locality is the sole test of admiralty tort jurisdiction. The last time the Court considered the matter, the question was left open. Atlantic Transport Co. v Imbrovek, 234 US 52, 58 L Ed 1208, 34 S Ct 733 (1914). In that case, a stevedore brought suit for injuries sustained on board a vessel while loading and stowing copper. The petitioner admitted the maritime locality of the tort, but contended that no maritime relationship was present. The Court sustained federal admiralty jurisdiction, but found that it was not necessary to decide whether locality alone is sufficient:

> "Even if it be assumed that the requirement as to locality in tort cases, while indispensable, is not necessarily exclusive, still in the present case the wrong which was the subject of the suit was, we think, of a maritime nature and hence the District Court, from any point of view, had jurisdiction. . . .

5. Davis v City of Jacksonville Beach, 251 F Supp 327 (MD Fla 1965) (injury to a swimmer by a surfboard); King v Testerman, 214 F Supp 335, 336 (ED Tenn 1963) (injuries to a water skier). See also Horton v J. & J. Aircraft, Inc. 257 F Supp 120, 121 (SD Fla 1966). Cf. Weinstein v Eastern Airlines, Inc. 316 F2d 758 (CA3 1963).

6. In another injured-swimmer case, McGuire v City of New York, 192 F Supp 866, 871-872 (SDNY 1961), the court stated:

> "The proper scope of jurisdiction should include all matters relating to the business of the sea and the business conducted on navigable waters.
>
> "The libel in this case does not relate to any tort which grows out of navigation. It alleges an ordinary tort, no different in substance because the injury occurred in shallow waters along the shore than if the injury had occurred on the sandy beach above the water line. Whether the City of New York should be held liable for the injury suffered by libellant is a question which can easily be determined in the courts of the locality. To endeavor to project such an action into the federal courts on the ground of admiralty juris-

". . . If more is required than the locality of the wrong in order to give the court jurisdiction, the relation of the wrong to maritime service, to navigation and to commerce on navigable waters, was quite sufficient." Id., at 61, 62, 58 L Ed 1208, 34 S Ct 733.

Apart from the difficulties involved in trying to apply the locality rule as the sole test of admiralty tort jurisdiction, another indictment of that test is to be found in the number of times the federal courts and the Congress, in the interests of justice, have had to create exceptions to it in the converse situation —i. e., when the tort has no maritime locality, but does bear a relationship to maritime service, commerce, or navigation. See 7A J. Moore, Federal Practice, Admiralty ¶ .325[4] (2d ed 1972). For example, in O'Donnell v Great Lakes Dredge & Dock Co., 318 US 36, 87 L Ed 596, 63 S Ct 488 (1943), the Court sustained the application of the Jones Act, 41 Stat 1007, 46 USC § 688 [46 USCS § 688], to injuries to a seaman on land, because of the seaman's connection with maritime commerce. We relied in that case on an analogy to maintenance and cure:

"[T]he maritime law, as recognized in the federal courts, has not in general allowed recovery for personal injuries occurring on land. But there is an important exception to this generalization in the case of maintenance and cure. From its dawn, the maritime law has recognized the seaman's right to maintenance and cure for injuries suffered in the course of his service to his vessel, whether occurring on sea or on land." Id., at 41–42, 87 L Ed 596, 63 S Ct 488.

Similarly, the doctrine of unseaworthiness has been extended to permit a seaman or a longshoreman to recover from a shipowner for injuries sustained wholly on land, so long as those injuries were caused by defects in the ship or its gear. Gutierrez v Waterman S. S. Corp. 373 US 206, 214–215, 10 L Ed 2d 297, 83 S Ct 1185 (1963). See also Strika v Netherlands Ministry of Traffic, 185 F2d 555 (CA2 1950).

Congress, too, has extended admiralty jurisdiction predicated on the relation of the wrong to maritime activities, regardless of the locality of the tort. In the Extension of Admiralty Jurisdiction Act, 62 Stat 496, 46 USC § 740 [46 USCS § 740], enacted in 1948, Congress provided:

"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."

---

diction is to misinterpret the nature of admiralty jurisdiction."

Other cases holding that admiralty jurisdiction was not properly invoked because the tort, while having a maritime locality, lacked a significant relationship to maritime navigation and commerce, include: Peytavin v Government Employees Insurance Co. 453 F2d 1121 (CA5 1972); Gowdy v United States, 412 F2d 525, 527–529 (CA6 1969); Smith v Guerrant, 290 F Supp 111, 113–114 (SD Tex 1968). See also J. W. Petersen Coal & Oil Co. v United States, 323 F Supp 1198, 1201 (ND Ill 1970); O'Connor & Co. v City of Pascagoula, 304 F Supp 681, 683 (SD Miss 1969); Hastings v Mann, 226 F Supp 962, 964–965 (EDNC 1964, aff'd 340 F2d 910 (CA4 1965). A similar view is taken by the English courts. Queen v Judge of the City of London Court [1892] 1 QB 273.

This Act was passed specifically to overrule cases, such as The Plymouth, supra, holding that admiralty does not provide a remedy for damage done to land structures by ships on navigable waters. Victory Carriers, Inc. v Law, 404 US, at 209, n 8, 30 L Ed 2d 383, 92 S Ct 418; Gutierrez v Waterman S. S. Corp. 373 US, at 209–210, 10 L Ed 2d 297, 83 S Ct 1185.[8]

[409 US 261]

In sum, there has existed over the years a judicial, legislative, and scholarly recognition that, in determining whether there is admiralty jurisdiction over a particular tort or class of torts, reliance on the relationship of the wrong to traditional maritime activity is often more sensible and more consonant with the purposes of maritime law than is a purely mechanical application of the locality test.

II

[1] One area in which locality as the exclusive test of admiralty tort jurisdiction has given rise to serious problems in application is that of aviation. For the reasons discussed above and those to be discussed, we have concluded that maritime locality alone is not a sufficient predicate for admiralty jurisdiction in aviation tort cases.

The first major extension of admiralty jurisdiction to land-based aircraft came in wrongful-death actions arising out of aircraft crashes at sea and brought under the Death on the High Seas Act, 46 USC §§ 761 et seq. [46 USCS §§ 761 et seq.]. The federal courts took jurisdiction of such cases because the literal provisions of that statute appeared to be clearly applicable. The Death on the High Seas Act, enacted in 1920, provides:

"Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may

[409 US 263]

maintain a suit for damages in the district courts of the United States, in admiralty . . . ."

The first aviation case brought pursuant to the Death on the High Seas Act was apparently Choy v Pan-American Airways Co. 1941 AMC 483 (SDNY 1941), where death was caused by the crash of a seaplane into the Pacific Ocean during a transoceanic flight. The District Court upheld admiralty jurisdiction on the ground that the language of the Act was broad and made no reference to surface vessels. According to the court:

"The statute certainly includes the phrase 'on the high seas' but there is no reason why this should make the law operable only on a horizontal plane. The very next phrase 'beyond a marine league from the shore of any State' may be said to include a vertical sense and another dimension." Id., at 484.

8. The Court has held, however, that there is no admiralty jurisdiction under the Extension of Admiralty Jurisdiction Act over suits brought by longshoremen injured while working on a pier, when such injuries were caused, not by ships, but by pier-based equipment. Victory Carriers, Inc. v Law, supra; Nacirema Co. v Johnson, 396 US 212, 223, 24 L Ed 2d 371, 90 S Ct 347 (1969). The Longshoremen's and Harbor Workers' Compensation Act, 33 USC §§ 901 et seq. [33 USCS §§ 901 et seq.], was amended in 1972 to cover employees working on those areas of the shore customarily used in loading, unloading, repairing, or building a vessel. Pub L No. 92-576, § 2, 86 Stat 1251,

[2] Since Choy, many actions for wrongful death arising out of aircraft crashes into the high seas beyond one marine league from shore have been brought under the Death on the High Seas Act, and federal jurisdiction has consistently been sustained in those cases.[13] Indeed, it may be

[409 US 264]

considered as settled that this specific federal statute gives the federal admiralty courts jurisdiction of such wrongful-death actions.

In recent years, however, some federal courts have been persuaded in aviation cases to extend their admiralty jurisdiction beyond the statutory coverage of the Death on the High Seas Act. Several cases have held that actions for *personal injuries* arising out of aircraft crashes into the high seas more than one league offshore or arising out of aircraft accidents in the airspace over the high seas were cognizable in admiralty because of their maritime locality, although they were not within the scope of the Death on the High Seas Act or any other federal legislation.[14] These cases, as well as most of those brought under the Death on the High Seas Act, involved torts both with a maritime locality, in that the alleged negligence became operative while the aircraft was on or over navigable waters, and also with some relationship to maritime commerce, at least insofar as the aircraft was beyond state territorial waters and performing a function—transoceanic crossing—that previously would have been performed by waterborne vessels.[15]

But a further extension of admiralty jurisdiction was created when courts began to sustain that jurisdiction in situations such as the one now before us—when the claim arose out of an aircraft accident that occurred on or over navigable waters *within* state territorial limits,

[409 US 265]

and when the aircraft was not on a transoceanic flight. Apparently, the first such case grew out of a 1960 crash of a commercial jet, bound from Boston to Philadelphia, that collided with a flock of birds over the airport runway and crashed into Boston Harbor within one minute after takeoff. Weinstein v Eastern Airlines, Inc. 316 F2d 758 (CA3 1963). In deciding that a wrongful-death action arising from this crash was within admiralty jurisdiction, the Court of Appeals for the Third Circuit applied the strict locality rule and found that the tort had a maritime locality. The court further justified the invocation of admiralty jurisdiction in that case by an analogy to the Death on the High Seas Act:

13. See, e. g., Wyman v Pan-American Airways, Inc. 181 Misc 963, 966, 43 NYS 2d 420, 423, affd 267 App Div 947, 48 NYS2d 459, affd, 293 NY 878, 59 NE2d 785 (1944); Higa v Transocean Airlines, 230 F2d 780 (CA9 1955); Noel v Linea Aeropostal Venezolana, 247 F2d 677, 680 (CA2 1957); Trihey v Transocean Air Lines, 255 F2d 824, 827 (CA9 1958); Lacey v L. W. Wiggins Airways, Inc. 95 F Supp 916 (Mass 1951); Wilson v Transocean Airlines, 121 F Supp 85 (ND Cal 1954); Stiles v National Airlines, Inc. 161 F Supp 125 (ED La 1958), affd 268 F2d 400 (CA5 1959); Noel v Airponents, Inc. 169 F Supp 348 (NJ 1958); Lavello v Danko, 175 F Supp 92 (SDNY 1959); Blumenthal v United States, 189 F Supp 439, 445 (ED Pa 1960), affd 306 F2d 16 (CA3 1962); Pardonnet v Flying Tiger Line, Inc. 233 F Supp 683 (ND Ill 1964); Kropp v Douglas Aircraft Co. 329 F Supp 447, 453–455 (EDNY 1971). Cf. D'Aleman v Pan American World Airways, 259 F2d 493 (CA2 1958).

14. Bergerson v Aero Associates, Inc. 213 F Supp 936 (ED La 1963); Notarian v Trans World Airlines, Inc. 244 F Supp 874 (WD Pa 1965); Horton v J. & J. Aircraft, Inc. 257 F Supp 120 (SD Fla 1966).

15. Whether this type of relationship to maritime commerce is a sufficient maritime nexus to justify admiralty jurisdiction over airplane accidents is discussed infra, at 271–272, 34 L Ed 2d 454. We do not decide that question in this case.

"If, as it has been held, a tort claim arising out of the crash of an airplane beyond the one marine league line is within the jurisdiction of admiralty, then a fortiori a crash of an aircraft just short of that line but still within the navigable waters is within that jurisdiction as well." Id., at 765.

There have been a few subsequent cases to like effect.[16] To the contrary, of course, is the decision of the Court of Appeals for the Sixth Circuit in the present case.

III

These latter cases graphically demonstrate the problems involved in applying a locality-alone test of admiralty tort jurisdiction to the crashes of aircraft. Airplanes, unlike waterborne vessels, are not limited by physical boundaries and can and do operate over both land and navigable bodies of water. As Professor Moore and

[409 US 266]

his colleague Professor Pelaez have stated, "In both death and injury cases . . . it is evident that while distinctions based on locality often are in fact quite relevant where water vessels are concerned, they entirely lose their significance where aircraft, which are not geographically restrained, are concerned." 7A J. Moore, Federal Practice, Admiralty ¶.330[5], pp 3772–3773 (2d ed 1972). In flights within the continental United States, which are principally over land, the fact that an aircraft happens to fall in navigable waters, rather than on land, is wholly fortuitous. The ALI Study, in criticizing the Weinstein decision, observed:

"If a plane takes off from Boston's Logan Airport bound for Philadelphia, and crashes on takeoff, it makes little sense that the next of kin of the passengers killed should be left to their usual remedies, ordinarily in state court, if the plane crashes on land, but that they have access to a federal court, and the distinctive substantive law of admiralty applies, if the wrecked plane ends up in the waters of Boston Harbor." ALI Study, 231.[17]

[3] Moreover, not only is the locality test in such cases wholly adventitious, but it is sometimes almost impossible to apply with any degree of certainty. Under the locality test, the tort "occurs" where the alleged negligence took effect, The Plymouth, supra; Smith & Son, v Taylor, 276 US 179, 72 L Ed 520, 48 S Ct 228 (1928); and in the case of aircraft that locus is often most difficult to determine.

The case before us provides a good example of these difficulties. The petitioners contend that since their aircraft crashed into the navigable waters of Lake Erie and was totally destroyed when it sank in those waters, the locality of the tort, or the place where the alleged

[409 US 267]

negligence took effect, was there. The fact that the major damage to their plane would not have occurred if it had not landed in the lake indicates, they say, that the substance and consummation of the wrong took place in navigable waters. The respondents, on the other hand, argue that the alleged negligence took effect when the plane collided with the birds—over land. Relying on cases such as Smith & Son v

16. Horsby v Fish Meal Co., 431 F 2d 865 (CA5 1970); Harris v United Air Lines, Inc., 275 F Supp 431, 432 (SD Ia 1967). Cf. Scott v Eastern Air Lines, Inc. 399 F2d 14, 21–22 (CA3 1968) (en banc).

17. See also Comment, Admiralty Jurisdiction: Airplanes and Wrongful Death in Territorial Waters, 64 Col L Rev 1084, 1091–1092 (1964).

Taylor, supra, where admiralty jurisdiction was denied in the case of a longshoreman struck by a ship's sling while standing on a pier, and knocked into the water, the respondents contend that a tort "occurs" at the point of first impact of the alleged negligence. Here, they say, the cause of action arose as soon as the plane struck the birds; from then on, the plane was destined to fall, and whether it came down on land or water should not affect "the locality of the act." See Thomas v Lane, 23 F Cas, at 960.

In the view we take of the question before us, we need not decide who has the better of this dispute. It is enough to note that either position gives rise to the problems inherent in applying the strict locality test of admiralty tort jurisdiction in aviation accident cases. The petitioners' argument, if accepted, would make jurisdiction depend on where the plane ended up—a circumstance that could be wholly fortuitous and completely unrelated to the tort itself. The anomaly is well illustrated by the hypothetical case of two aircraft colliding at a high altitude, with one crashing on land and the other in a navigable river. If, on the other hand, the respondents' position were adopted, jurisdiction would depend on whether the plane happened to be flying over land or water when the original impact of the alleged negligence occurred. This circumstance, too, could be totally fortuitous. If the plane in the present case struck the birds over Cleveland's Lakefront Airport,

[409 US 268]

admiralty jurisdiction would not lie; but if the plane had just crossed the shoreline when it struck the birds, admiralty jurisdiction would attach, even if the plane were then able to make it back to the airport and crashland there. These are hardly the types of distinctions with which admiralty law was designed to deal.

[4] All these and other difficulties that can arise in attempting to apply the locality test of admiralty jurisdiction to aeronautical torts are, of course, attributable to the inherent nature of aircraft. Unlike waterborne vessels, they are not restrained by one-dimensional geographic and physical boundaries. For this elementary reason, we conclude that the mere fact that the alleged wrong "occurs" or "is located" on or over navigable waters —whatever that means in an aviation context—is not of itself sufficient to turn an airplane negligence case into a "maritime tort." It is far more consistent with the history and purpose of admiralty to require also that the wrong bear a significant relationship to traditional maritime activity. We hold that unless such a relationship exists, claims arising from airplane accidents are not cognizable in admiralty in the absence of legislation to the contrary.

IV

This conclusion, however, does not end our inquiry, for there remains the question of what constitutes, in the context of aviation, a significant relationship to traditional maritime activity. The petitioners argue that any aircraft falling into navigable waters has a sufficient relationship to maritime activity to satisfy the test.

[5] We cannot accept that definition of traditional maritime activity. It is true that in a literal sense there may be some similarities between the problems posed for a plane downed on water and those faced by a sinking ship. But the differences between the two modes of transportation are far greater, in terms of their basic qualities and traditions, and consequently in terms of the conceptual expertise of the law to be applied.[18] The law of admiralty has evolved over many centuries, designed and molded to handle problems of vessels relegated to ply the waterways of the world, beyond whose

[409 US 270]

shores they cannot go. That law deals with navigational rules—rules that govern the manner and direction those vessels may rightly move upon the waters. When a collision occurs or a ship founders at sea, the law of admiralty looks to those rules to determine fault, liability, and all other questions that may arise from such a catastrophe. Through long experience, the law of the sea knows how to determine whether a particular ship is seaworthy, and it knows the nature of maintenance and cure. It is concerned with maritime liens, the general average, captures and prizes, limitation of liability, cargo damage, and claims for salvage.

[4–6] Rules and concepts such as these are wholly alien to air commerce, whose vehicles operate in a totally different element, unhindered by geographical boundaries and exempt from the navigational rules of the maritime road. The matters with which admiralty is basically concerned have no conceivable bearing on the operation of aircraft, whether over land or water. Indeed, in contexts other than tort, Congress and the courts have recognized that, because of these differences, aircraft are not subject to maritime law.[19] Although dangers of wind and wave faced by a plane that has crashed on navigable waters may be superficially similar to those encountered by a sinking ship, the plane's unexpected descent will almost invariably have been attributable to a cause unrelated to the sea—be it pilot error, defective design or manufacture of airframe or engine, error of a traffic controller at an airport, or some other cause and the determination of liability will thus be based on factual and conceptual inquiries unfamiliar to the law of admiralty. It is clear, therefore, that neither the fact that a plane goes down on navigable waters nor the fact that the negligence "occurs" while a plane is flying

[409 US 271]

over such waters is enough to create such a relationship to traditional maritime activity as to justify the invocation of admiralty jurisdiction.

[2] We need not decide today whether an aviation tort can ever, under any circumstances, bear a sufficient relationship to traditional maritime activity to come within admiralty jurisdiction in the absence of legislation.[20] It could be argued, for instance, that if a plane flying from New York to London crashed

18. Moreover, if the mere happenstance that an aircraft falls into navigable waters creates a maritime relationship because of the maritime dangers to a sinking plane, then the maritime-relationship test would be the same as the petitioners' view of the maritime locality test, with the same inherent fortuity.

19. See supra, at 261–262, 34 L Ed 2d 463.

[2] 20. Of course, under the Death on the High Seas Act, a wrongful-death action arising out of an airplane crash on the high seas beyond a marine league from the shore of a State may clearly be brought in a federal admiralty court.

in the mid-Atlantic, there would be admiralty jurisdiction over resulting tort claims even absent a specific statute.[21] An aircraft in that situation might be thought to bear a significant relationship to traditional maritime activity because it would be performing a function traditionally performed by waterborne vessels.[22] Moreover,

[409 US 272]

other factors might come into play in the area of international air commerce—choice-of-forum problems, choice of law problems,[23] international-law problems, problems involving multination conventions and treaties, and so on.

[7] But none of these considerations is of concern in the case before us. The flight of the petitioners' land-based aircraft was to be from Cleveland to Portland, Maine, and thence to White Plains, New York—a flight that would have been almost entirely over land and within the continental United States. After it struck the flock of seagulls over the runway, the plane descended and settled in Lake Erie within the territorial waters of Ohio. We can find no significant relationship between such an event befalling a land-based plane flying from one point in the continental United States to another, and traditional maritime activity involving navigation and commerce on navigable waters.

21. But see 7A J. Moore, Federal Practice, Admiralty ¶ .330[5], p 3772 (2d ed 1872):

"What possible rational basis is there, for instance, in holding that the personal representative of a passenger killed in the crash of an airplane traveling from Shannon, Ireland to Logan Field in Boston has a cause of action within the admiralty jurisdiction if the plane goes down three miles from shore; may have a cause of action within the admiralty jurisdiction if the plane goes down within an area circumscribed by the shore and the three-mile limit; and will not have a cause of action within the admiralty jurisdiction if the plane managed to remain airborne until reaching the Massachusetts coast? And this notwithstanding that in all instances the plane may have developed engine trouble or been the victim of pilot error at an identical site far out over the Atlantic."

22. Apart from transoceanic flights, the Government's brief suggests that another example where admiralty jurisdiction might properly be invoked in an airplane accident case on the ground that the plane was performing a function traditionally performed by waterborne vessels, is shown in Hornsby v Fish Meal Co. 431 F 2d 865 (CA5 1970), which involved the mid-air collision of two light aircraft used in spotting schools of fish and the crash of those aircraft into the Gulf of Mexico within one marine league of the Louisiana shore.

23. In such a situation, it has been stated:

"Were the maritime law not applicable, it is argued that the recovery would depend upon a confusing consideration of what substantive law to apply, i. e., the law of the forum, the law of the place where each decedent [or injured party] purchased his ticket, the law of the place where the plane took off, or, perhaps, the law of the point of destination." 7A J. Moore, Federal Practice, Admiralty ¶ .330[5], p 3774 (2d ed 1972).

In the situation before us, which is only fortuitously and incidentally connected to navigable waters and which bears no relationship to traditional maritime activity, the Ohio courts could plainly exercise jurisdiction over the suit,[24] and could plainly apply familiar concepts of Ohio tort law without any effect on maritime endeavors.[25]

[11] It may be, as the petitioners argue, that aviation tort cases should be governed by uniform substantive and procedural laws, and that such actions should be heard in the federal courts so as to avoid divergent results and duplicitous litigation in multi-party cases. But for this Court to uphold federal admiralty jurisdiction

[409 US 274]

in a few wholly fortuitous aircraft cases would be a most quixotic way of approaching that goal. If federal uniformity is the desired goal with respect to claims arising from aviation accidents, Congress is free under the Commerce Clause to enact legislation applicable to all such accidents, whether occurring on land or water, and adapted to the specific characteristics of air commerce.

[12] For the reasons stated in this opinion we hold that, in the absence of legislation to the contrary, there is no federal admiralty jurisdiction over aviation tort claims arising from flights by land-based aircraft between points within the continental United States.[26]

The judgment is affirmed.

24. There is no diversity of citizenship between petitioners and the City of Cleveland.

[8–10] 25. The United States, respondent Dicken's employer, can be sued, of course, only in federal district court under the Federal Tort Claims Act, 28 USC §§ 1346(b) and 2674 [28 USCS §§ 1346(b) and 2674]. Such an action has been filed by the petitioners here, but even in that suit the federal court will apply the substantive tort law of Ohio. Thus, Ohio law will not be ousted in this case, and the pendency of the action under the Tort Claims Act has no relevance in determining whether the instant case should be heard in admiralty, with its federal substantive law.

The possibility that the petitioners would have to litigate the same claim in two forums is the same possibility that would exist if their plane had stopped on the shore of the lake, instead of going into the water, and is the same possibility that exists every time a plane goes down on land, negligence of the federal air traffic controller is alleged, and there is no diversity of citizenship. This problem cannot be solved merely by upholding admiralty jurisdiction in cases where the plane happens to fall on navigable waters.

26. Some such flights, e. g., New York City to Miami, Florida, no doubt involve passage over "the high seas beyond a marine league from the shore of any State." To the extent that the terms of the Death on the High Seas Act become applicable to such flights, that Act, of course, is "legislation to the contrary."

[457 US 668]

FOREMOST INSURANCE COMPANY et al., Petitioners,

v

PANSY F. RICHARDSON et al.

457 US 668, 73 L Ed 2d 300, 102 S Ct 2654, reh den (US) 74 L Ed 2d 160, 103 S Ct 198

[No. 80-2134]

Argued January 12, 1982. Decided June 23, 1982.

OPINION OF THE COURT

[457 US 669]

Justice Marshall delivered the opinion of the Court.

The issue presented in this case is whether the collision of two pleasure boats on navigable waters falls within the admiralty jurisdiction of the federal courts. See 28 USC § 1333 [28 USCS § 1333]. We granted certiorari to resolve the confusion in the lower courts respecting the impact of Executive Jet Aviation, Inc. v City of Cleveland, 409 US 249, 34 L Ed 2d 454, 93 S Ct 493 (1972), on traditional rules for determining federal admiralty jurisdiction. 454 US 813, 70 L Ed 2d 81, 102 S Ct 88 (1981). The United States Court of Appeals for the Fifth Circuit held that an accident between two vessels in navigable waters bears a sufficient relationship to traditional maritime activity to fall within federal admiralty jurisdiction. We affirm.

I

Two pleasure boats collided on the Amite River in Louisiana, resulting in the death of Clyde Richardson. The wife and children of the decedent brought this action in the United States District Court for the Middle District of Louisiana, alleging, inter alia, that petitioner Shirley Eliser had negligently operated the boat that collided with the vessel

occupied by the decedent.[1] Respondents also named petitioner

[457 US 670]

Foremost Insurance Co., Eliser's insurer, as a defendant. Jurisdiction was claimed under 28 USC § 1333(1) [28 USCS § 1333(1)], which gives federal district courts exclusive jurisdiction over "[a]ny civil case of admiralty or maritime jurisdiction." Petitioners moved to dismiss, arguing that the complaint did not state a cause of action within the admiralty or maritime jurisdiction of the District Court.

In ruling on petitioners' motion, the District Court found the following facts to be undisputed:[2]

"(1) One boat was used for pleasure boating, such as boat riding and water skiing, and at the time of the accident the boat was actually pulling a skier on a zip sled;

"(2) The other boat was used exclusively for pleasure fishing and was described as a bass boat;

"(3) Neither boat had ever been used in any 'commercial maritime activity' before the accident;

"(4) At the time of the accident neither boat was involved in any 'commercial maritime activity' of any sort;

"(5) Neither of the two drivers of the boat were being paid to operate the boat nor was this activity in any way a part of their regular type of employment;

"(6) None of the passengers on either boat were engaged

[457 US 671]

in any kind of 'traditional maritime activity' either before or at the time of the accident;

"(7) Neither of the boats involved were under hire in any traditional maritime form;

"(8) There is no evidence to indicate that any 'commercial activity', even in the broadest admiralty sense, had ever been previously engaged in by either of the boats in question, and in fact the two boats would have to be classified as 'purely pleasure craft', not in any way 'involved in commerce', and,

"(9) There was no other instrumentality involved in this accident that had even a minor relationship to 'admiralty' or 'commerce', i.e. a buoy, barge, oil drilling apparatus, etc." 470 F Supp 699, 700 (1979).

---

1. The wife and children of the decedent also named respondent June Allen as a defendant. They alleged that Allen was operating the vessel at the time of the collision, and that the decedent's death was caused by either the negligence of Allen or that of petitioner Eliser. Allen counterclaimed, alleging that the decedent had been operating the boat, and that her injuries were caused by his negligence. The factual dispute concerning whether the decedent or Allen was operating the boat is irrelevant to the jurisdictional issue. However, because of the divergent interests and claims of respondent Allen and the respondent family of the decedent below, we refer only to the decedent's family when we use the term "respondents" throughout this opinion.

2. The District Court assumed that the Amite River is navigable at the site of the collision. Although the issue is not free from doubt, it appears from the opinion and the disposition of the Court of Appeals that the court found that the river is navigable at this site although seldom, if ever, used for commercial traffic. This opinion is premised on our understanding that the river at this point is navigable, see Brief for Petitioners 20, but we leave open the question whether petitioners have preserved the opportunity to argue this issue upon further development of facts in the District Court.

After reviewing decisions of this Court and the Fifth Circuit, as well as relevant commentary, the District Court found that there must be some relationship with traditional maritime activity for an injury sustained on navigable water to fall within federal admiralty jurisdiction. The District Court held that commercial maritime activity is necessary to satisfy this relationship, and granted petitioners' motion to dismiss the complaint for lack of subject-matter jurisdiction because the collision of these two pleasure boats did not involve any commercial activity.

The Court of Appeals reversed. 641 F2d 314 (1981). The Court of Appeals agreed that Executive Jet, supra, and relevant Fifth Circuit decisions establish that "admiralty jurisdiction requires more than the occurrence of the tort on navigable waters—that additionally there must be a significant relationship between the wrong and traditional maritime activity." 641 F2d, at 315. It disagreed with the District Court, however, on the application of this principle to the undisputed facts of this case. Relying on the fact that the "Rules of the Road" govern all boats on navigable waters, and on the uncertainty that would accompany a finding of no admiralty jurisdiction in this case, the Court of Appeals held

[457 US 672]

that "two boats, regardless of their intended use, purpose, size, and activity, are engaged in traditional maritime activity when a collision between them occurs on navigable waters." Id., at 316.[3]

II

Prior to our opinion in Executive Jet, there was little question that a complaint such as the one filed here stated a cause of action within federal admiralty jurisdiction. Indeed, the Executive Jet Court begins its opinion by observing that, under the traditional rule of admiralty jurisdiction, "[i]f the wrong occurred on navigable waters, the action is within admiralty jurisdiction." 409 US, at 253, 34 L Ed 2d 454, 93 S Ct 493 (citing Thomas v Lane, 23 F Cas 957, 960 (No. 13,902) (CC Me 1813) (Story, J., on Circuit). See also The Plymouth, 3 Wall 20, 36, 18 L Ed 125 (1866) ("Every species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters, is of admiralty cognizance"). Under this rule, an action arising out of a collision between two pleasure boats on navigable waters clearly falls within the admiralty jurisdiction of the district courts. When presented with this precise situation in the past, this Court has found it unnecessary even to discuss whether the district court's admiralty jurisdiction had been properly invoked, instead assuming the propriety of such jurisdiction merely because the accident occurred on navigable waters. Levinson v Deupree, 345 US 648, 651, 97 L Ed 1319, 73 S Ct (1953). See also Just v Chambers, 312 US 383, 85 L Ed 903, 61 S Ct 687 (1941) (injury to guest from carbon monoxide poisoning in the cabin of a pleasure boat). Cf. Coryell v Phipps, 317 US 406, 87 L Ed 363, 63 S Ct 291 (1943). In light of these decisions, we address here

3. Judge Thornberry, concurring in part and dissenting in part, argued that federal admiralty jurisdiction could not be sustained if the river at the site of the accident, although navigable, did not also function as an integral or major "artery of commerce." 641 F2d, at 317.

only the narrow question whether Executive Jet disapproved these earlier decisions sub silentio.

[457 US 673]

In Executive Jet, this Court held that a suit for property damage to a jet aircraft that struck a flock of sea gulls upon takeoff and sank in the navigable waters of Lake Erie did not state a claim within the admiralty jurisdiction of the district courts. In reaching this conclusion, the Court observed that the mechanical application of the locality rule as the sole test for determining whether there is admiralty jurisdiction had been widely criticized by commentators, and that the federal courts and Congress had been compelled to make exceptions to this approach in the interests of justice in order to include certain torts with no maritime locality. The Court determined that claims arising from airplane accidents are cognizable in admiralty only when the wrong bears a significant relationship to traditional maritime activity. 409 US, at 268, 34 L Ed 2d 454, 93 S Ct 493. Given the realities of modern-day air travel, the Executive Jet Court held that, "in the absence of legislation to the contrary, there is no federal admiralty jurisdiction over aviation tort claims arising from flights by land-based aircraft between points within the continental United States." Id., at 274, 34 L Ed 2d 454, 93 S Ct 493.

[1] The express holding of Executive Jet is carefully limited to the particular facts of that case. However, the thorough discussion of the theoretical and practical problems inherent in broadly applying the traditional locality rule has prompted several courts and commentators to construe Executive Jet as applying to determinations of federal admiralty jurisdiction outside the context of aviation torts. See, e. g., Kelly v Smith, 485 F2d 520 (CA5 1973); Calamari, The Wake of Executive Jet—A Major Wave or a Minor Ripple, 4 Maritime Law 52 (1979). We believe that this is a fair construction. Although Executive Jet addressed only the unique problems associated with extending admiralty jurisdiction to aviation torts, much of the Court's rationale in rejecting a strict locality rule also applies to the maritime context. Indeed, the Executive Jet Court relied extensively on admiralty and maritime decisions of this Court and on congressional action extending

[457 US 674]

admiralty jurisdiction to torts with a significant relationship to traditional maritime activity, but with no maritime locality.[4]

[2, 3] We recognize, as did the Court of Appeals, that the Executive Jet requirement that the wrong have a significant connection with traditional maritime activity is not limited to the aviation context. We also agree that there is no requirement that "the maritime activity be

4. In addition to noting these examples where strict application of the locality rule would have deprived the courts of admiralty jurisdiction despite a clear connection to maritime activity, the Court noted the difficulties of extending jurisdiction to torts with a maritime locality, but absolutely no connection to maritime activity. See 409 US, at 255–256, 34 L Ed 2d 454, 93 S Ct 493 (disapproving decisions sustaining admiralty jurisdiction over claims by swimmers injured by other swimmers or submerged objects in shallow waters near shore); id., at 256–257, 34 L Ed 2d 454, 93 S Ct 493 (approving decisions requiring some connection with traditional maritime activity).

an exclusively commercial one." 641 F2d, at 316. Because the "wrong" here involves the negligent operation of a vessel on navigable waters, we believe that it has a sufficient nexus to traditional maritime activity to sustain admiralty jurisdiction in the District Court.

We are not persuaded by petitioners' argument that a substantial relationship with commercial maritime activity is necessary because commercial shipping is at the heart of the traditional maritime activity sought to be protected by giving the federal courts exclusive jurisdiction over all admiralty suits. This argument is premised on the faulty assumption that, absent this relationship with *commercial* activity, the need for uniform rules to govern conduct and liability disappears, and "federalism" concerns dictate that these torts be litigated in the state courts.

[4a] Although the primary focus of admiralty jurisdiction is unquestionably the protection of maritime commerce, petitioners take too narrow a view of the federal interest sought to be protected. The federal interest in protecting maritime commerce cannot be adequately served if admiralty jurisdiction

[457 US 675]

is restricted to those individuals actually *engaged* in commercial maritime activity. This interest can be fully vindicated only if *all* operators of vessels on navigable waters are subject to uniform rules of conduct. The failure to recognize the breadth of this federal interest ignores the potential effect of noncommercial maritime activity on maritime commerce. For example, if these two boats collided at the mouth of the St. Lawrence Seaway, there would be a substantial effect on maritime commerce, without regard to whether either boat was actively, or had been previously, engaged in commercial activity. Furthermore, admiralty law has traditionally been concerned with the conduct alleged to have caused this collision by virtue of its "navigational rules—rules that govern the manner and direction those vessels may rightly move upon the waters." Executive Jet, 409 US, at 270, 34 L Ed 2d 454, 93 S Ct 493. The potential disruptive impact of a collision between boats on navigable waters, when coupled with the traditional concern that admiralty law holds for navigation,[5] compels the conclusion that this collision between two pleasure boats on navigable waters has a significant relationship with maritime commerce.

Yet, under the strict commercial rule proffered by petitioners, the status of the boats as "pleasure" boats, as opposed to "commercial" boats, would control the existence of admiralty jurisdiction. Application of this rule, however, leads to inconsistent findings or denials of admiralty jurisdiction similar to those found fatal to the locality rule in Executive Jet. Under the commercial rule, for

5. [4b] Not every accident in navigable waters that might disrupt maritime commerce will support federal admiralty jurisdiction. In Executive Jet, for example, we concluded that the sinking of the plane in navigable waters did not give rise to a claim in admiralty even though an aircraft sinking in the water could create a hazard for the navigation of commercial vessels in the vicinity. However, when this kind of potential hazard to maritime commerce arises out of activity that bears a substantial relationship to traditional maritime activity, as does the navigation of the boats in this case, admiralty jurisdiction is appropriate.

tuitous circumstances
[457 US 676]
such as whether the boat was, or had ever been, rented, or whether it had ever been used for commercial fishing, control the existence of federal-court jurisdiction. The owner of a vessel used for both business and pleasure might be subject to radically different rules of liability depending upon whether his activity at the time of a collision is found by the court ultimately assuming jurisdiction over the controversy to have been sufficiently "commercial." We decline to inject the uncertainty inherent in such line-drawing into maritime transportation. Moreover, the smooth flow of maritime commerce is promoted when all vessel operators are subject to the same duties and liabilities. Adopting the strict commercial rule would frustrate the goal of promoting the smooth flow of maritime commerce, because the duties and obligations of noncommercial navigators traversing navigable waters flowing through more than one State would differ "depending upon their precise location within the territorial jurisdiction of one state or another." 641 F2d, at 316.

Finally, our interpretation is consistent with congressional activity in this area. First, Congress defines the term "vessel," for the purpose of determining the scope of various shipping and maritime transportation laws, to include all types of waterborne vessels, without regard to whether they engage in commercial activity. See, e. g., 1 USC § 3 [1 USCS § 3] ("'vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water"). Second, the federal "Rules of the Road," designed for preventing collisions on navigable waters, see, e. g., 94 Stat 3415, 33 USC § 2001 et seq. (1976 ed, Supp IV) [33 USCS § 2001 et seq.], apply to all vessels without regard to their commercial or noncommercial nature.[6] Third, when it extended
[457 US 677]
admiralty jurisdiction to injuries on land caused by ships on navigable waters, Congress directed that "[t]he admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury . . . *caused by a vessel on navigable water*. . . ." Extension of Admiralty Jurisdiction Act, 62 Stat 496, 46 USC § 740 [46 USCS § 740].[7]

[5] In light of the need for uniform rules governing navigation, the potential impact on maritime commerce when two vessels collide on navigable waters, and the uncer-

6. Petitioners argue that admiralty jurisdiction in the federal courts is unnecessary to ensure the uniform application of the Rules of the Road to boat navigation because state courts are bound by the construction federal courts give to statutes relating to navigation. Assuming that petitioners are correct, this fact does not negate the importance that Congress has attached to the federal interest in having all vessels operating on navigable waters governed by uniform rules and obligations, which is furthered by consistent application of federal maritime legislation under federal admiralty jurisdiction.

7. We refer to this language only to demonstrate that Congress did not require a commercial-activity nexus when it extended admiralty jurisdiction. We express no opinion on whether this Act could be construed to provide an independent basis for jurisdiction.

tainty and confusion that would necessarily accompany a jurisdictional test tied to the commercial use of a given boat, we hold that a complaint alleging a collision between two vessels on navigable waters properly states a claim within the admiralty jurisdiction of the federal courts. Therefore, the judgment of the Court of Appeals is affirmed.

SEPARATE OPINION

Justice Powell, with whom The Chief Justice, Justice Rehnquist, and Justice O'Connor join, dissenting.

No trend of decisions by this Court has been stronger-for two decades or more—than that toward expanding federal jurisdiction at the expense of state interests and state-court jurisdiction. Of course, Congress also has moved steadily and expansively to exercise its Commerce Clause and preemptive power to displace state and local authority. Often decisions of this Court and congressional enactments have been necessary in the national interest. The effect, nevertheless,

[457 US 678]

has been the erosion of federalism—a basic principle of the Constitution and our federal Union.

Today's Court decision, an example of this trend, is not necessary to further any federal interest. On its face, it is inexplicable. The issue is whether the federal law of admiralty, rather than traditional state tort law, should apply to an accident on the Amite River in Louisiana between two small boats. "One was an eighteen foot pleasure boat powered by a 185 hp Johnson outboard motor that was being used for water skiing purposes at the time of the accident. The other was a sixteen foot 'bass boat' powered by an outboard motor that was used exclusively for pleasure fishing." 470 F Supp 699, 700 (MD La 1979). It also is undisputed that both boats were used "exclusively for pleasure"; that neither had ever been used in any "commercial maritime activity"; that none of the persons aboard the boats had ever been engaged in any such activity; and that neither of the boats was used for hire. Ibid. The Court of Appeals conceded that "the place where the accident occurred is seldom, if ever, used for commercial activity." 641 F2d 314, 316 (CA5 1981).

In my view there is no substantial federal interest that justifies a rule extending admiralty jurisdiction to the edge of absurdity. I dissent.

Congress has provided some rules governing water traffic, just as it has done for some land traffic. See 23 USC § 154 [23 USCS § 154] (55 mph speed limit). Yet no one suggests that federal jurisdiction is needed to prevent chaos in automobile traffic, or that only federal courts are qualified to try accident cases.

State courts are duty bound to apply federal as well as local "uniform rules of conduct." See Testa v Katt, 330 US 386, 91 L Ed 967, 67 S Ct 810 (1947). The Court does not suggest that state courts lack competency to apply federal as well as state law to this type of water traffic. And this Court stands ready, if necessary, to review state decisions to ensure that important issues of federal law are resolved correctly.

Federal courts should not displace state responsibility and choke the federal judicial docket on the basis of federal concerns

[457 US 686]

that in truth are only "imaginary." In accord with the teaching of Executive Jet, I would not extend federal admiralty jurisdiction beyond its traditional roots and reason for existence. I dissent from the Court's decision to sever a historic doctrine from its historic justification.

EVERETT A. SISSON, Petitioner

v

BURTON B. RUBY et al.

497 US —, 111 L Ed 2d 292, 110 S Ct —

[No. 88-2041]

Argued April 23, 1990. Decided June 25, 1990.

OPINION OF THE COURT

[497 US 359]

Justice Marshall delivered the opinion of the Court.

[1a, 2a, 3a] We must decide whether 28 USC § 1333(1) [28 USCS § 1333(1)], which grants federal district courts jurisdiction over "[a]ny civil case of admiralty or maritime jurisdiction," confers federal jurisdiction over petitioner's limitation of liability suit brought in connection with a fire on his vessel. We hold that it does.[1]

1. [2b, 3b] Sisson has also argued throughout this litigation that the Limited Liability Act, Rev Stat § 4281 et seq., 46 USC App § 181 et seq. (1982 ed, Supp V) [46 USCS Appx §§ 181 et seq.], provides an independent basis for federal jurisdiction. Respondents contend that the Act does not create jurisdiction, but instead may be invoked only in cases otherwise within the maritime jurisdiction of § 1333(1). We need not decide which party is correct, for even were we to agree that the Limited Liability Act does not independently provide a basis for this action, § 1333(1) is sufficient to confer jurisdiction. Petitioner also

[497 US 360]

Everett Sisson was the owner of the Ultorian, a 56-foot pleasure yacht. On September 24, 1985, while the Ultorian was docked at a marina on Lake Michigan, a navigable waterway, a fire erupted in the area of the vessel's washer/dryer unit. The fire destroyed the Ultorian and damaged several neighboring vessels and the marina. In the wake of the fire, respondents filed claims against Sisson for over $275,000 for damages to the marina and the other vessels. Invoking the provision of the Limited Liability Act that limits the liability of an owner of a vessel for any damage done "without the privity or knowledge of such owner" to the value of the vessel and its freight, 46 USC App § 183(a) (1982 ed, Supp V) [46 USCS Appx § 183(a)], Sisson filed a petition for declaratory and injunctive relief in Federal District Court to limit his liability to $800, the salvage value of the Ultorian after the fire. Sisson argued that the federal court had maritime jurisdiction over his limitation of liability action pursuant to § 1333(1). The District Court disagreed, dismissing the petition for lack of subject-matter jurisdiction. In re Complaint of Sisson, 663 F Supp 858 (ND Ill 1987). Sisson sought reconsideration on the ground that the Limited Liability Act independently conferred jurisdiction over the action. The District Court denied Sisson's motion, both on the merits and on the basis of Sisson's failure to raise the argument before the dismissal of the action. In re Complaint of Sisson, 668 F Supp 1196 (ND Ill 1987). The Court of Appeals for the Seventh Circuit affirmed, holding that neither § 1333(1) nor the Limited Liability Act conferred jurisdiction. In re Complaint of Sisson, 867 F2d 341 (1989). We granted certiorari, 493 US 1055, 107 L Ed 2d 947, 110 S Ct 863 (1990), and now reverse.

[1b] Until recently, § 1333(1) jurisdiction over tort actions was determined largely by the application of a "locality" test. As this Court stated the test in The Plymouth, 3 Wall 20,

[497 US 361]

36, 18 L Ed 125 (1866): "Every species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters, is of admiralty cognizance." See also Executive Jet Aviation, Inc. v City of Cleveland, 409 US 249, 253-254, 34 L Ed 2d 454, 93 S Ct 493 (1972) (describing the locality test). Executive Jet marked this Court's first clear departure from the strict locality test. There, a jet aircraft struck a flock of sea gulls while taking off, lost power, and crashed into the navigable waters of Lake Erie, which lay just past the end of the runway. The owner of the aircraft sued the city of Cleveland, the owner of the airport, in federal court, arguing that § 1333(1) conferred federal jurisdiction over the action. Noting "serious difficulties with the locality test," id., at 255, 34 L Ed 2d 454, 93 S Ct 493, we refused to enter into a debate over whether the tort occurred where the plane had crashed and been destroyed (the navigable waters of Lake Erie) or where it had struck the sea gulls (over land), id., at 266-267, 34 L Ed 2d 454, 93 S Ct 493. Rather, we held that jurisdiction was lacking because "the wrong [did not] bear a significant relationship to traditional maritime activity." Id., at 268, 34 L Ed 2d 454, 93 S Ct 493.

---

argues that the Admiralty Extension Act, 62 Stat 496, 46 USC App § 740 (1982 ed, Supp V) [46 USCS Appx § 740], provides an independent basis for jurisdiction. We decline to consider that argument because it was not raised below.

Although our holding in Executive Jet was limited by its terms to cases involving aviation torts, that case's "thorough discussion of the theoretical and practical problems inherent in broadly applying the traditional locality rule . . . prompted several courts and commentators to construe Executive Jet as applying to determinations of federal admiralty jurisdiction outside the context of aviation torts." Foremost Ins. Co. v Richardson, 457 US 668, 673, 73 L Ed 2d 300, 102 S Ct 2654 (1982). In Foremost, we approved this broader interpretation of Executive Jet. 457 US, at 673, 73 L Ed 2d 300, 102 S Ct 2654. Foremost involved a collision, on what we assumed to be navigable waters, id., at 670, n 2, 73 L Ed 2d 300, 102 S Ct 2654, between an 18-foot pleasure boat and a 16-foot recreational fishing boat, see Richardson v Foremost Ins. Co. 470 F Supp 699, 700 (MD La 1979). Neither vessel had ever been engaged in any commercial maritime activity. 457 US, at 670-671, 73 L Ed 2d 300, 102 S Ct 2654.

[497 US 362]

We began our application of Executive Jet by rejecting "petitioners' argument that a substantial relationship with *commercial* maritime activity is necessary" to a finding of maritime jurisdiction. 457 US, at 674, 73 L Ed 2d 300, 102 S Ct 2654 (emphasis added). Although we recognized that protecting commercial shipping is at the heart of admiralty jurisdiction, we also noted that that interest

> "cannot be adequately served if admiralty jurisdiction is restricted to those individuals actually *engaged* in commercial maritime activity. This interest can be fully vindicated only if *all* operators of vessels on navigable waters are subject to uniform rules of conduct. The failure to recognize the breadth of this federal interest ignores the potential effect of noncommercial maritime activity on maritime commerce. . . . The potential disruptive impact of a collision between boats on navigable waters, when coupled with the traditional concern that admiralty law holds for navigation, compels the conclusion that this collision between two pleasure boats on navigable waters has a significant relationship with maritime commerce." Id., at 674-675, 73 L Ed 2d 300, 102 S Ct 2654 (footnote omitted).

In a footnote to the above passage, we noted that "[n]ot every accident in navigable waters that might disrupt maritime commerce will support federal admiralty jurisdiction," id., at 675, n 5, 73 L Ed 2d 300, 102 S Ct 2654 (citing Executive Jet), but that when a "potential hazard to maritime commerce arises out of activity that bears a substantial relationship to traditional maritime activity, as does the navigation of boats in this case, admiralty jurisdiction is appropriate." 457 US, at 675, n 5, 73 L Ed 2d 300, 102 S Ct 2654.

This case involves a fire that began on a noncommercial vessel at a marina located on a navigable waterway. Certainly, such a fire has a potentially disruptive impact on maritime commerce, as it can spread to nearby commercial vessels or make the marina inaccessible to such vessels. Indeed, fire is one of the most significant hazards facing commercial vessels.

[497 US 363]

See, e. g., Southport Fisheries, Inc. v Saskatchewan Govt. Ins. Office, 161 F Supp 81, 83-84 (EDNC 1958).

[1c, 4] Respondents' only argu-

ment to the contrary is that the potential effect on maritime commerce in this case was minimal because no commercial vessels happened to be docked at the marina when the fire occurred. This argument misunderstands the nature of our inquiry. We determine the potential impact of a given type of incident by examining its general character. The jurisdictional inquiry does not turn on the *actual* effects on maritime commerce of the fire on Sisson's vessel; nor does it turn on the particular facts of the incident in this case, such as the source of the fire or the specific location of the yacht at the marina, that may have rendered the fire on the Ultorian more or less likely to disrupt commercial activity. Rather, a court must assess the general features of the type of incident involved to determine whether such an incident is likely to disrupt commercial activity. Here, the general features—a fire on a vessel docked at a marina on navigable waters—plainly satisfy the requirement of potential disruption to commercial maritime activity.

[1d, 5a] Our approach here comports with the way in which we characterized the potential disruption of the types of incidents involved in Executive Jet and Foremost. This first aspect of the jurisdictional test was satisfied in Executive Jet because "an aircraft sinking in the water could create a hazard for the navigation of commercial vessels in the vicinity." Foremost, 457 US, at 675, n 5, 73 L Ed 2d 300, 102 S Ct 2654. Likewise, in Foremost the Court noted "[t]he potential[ly] disruptive impact of a collision between boats on navigable waters." Id., at 675, 73 L Ed 2d 300, 102 S Ct 2654. Indeed, we supported our finding of potential disruption there with a description of the likely effects of a collision at the mouth of the St. Lawrence Seaway, ibid., an area heavily traveled by commercial vessels, even though the place where the collision actually had occurred apparently was "seldom, if ever, used for commercial traffic," id., at 670, n 2, 73 L Ed 2d 300, 102 S Ct 2654. Our cases

[497 US 364]

thus lead us to eschew the fact-specific jurisdictional inquiry urged on us by respondents.[2]

2. [5b] Justice Scalia argues that we should abandon the requirement that the incident have the potential for disrupting maritime commerce. He argues that, "as a practical matter, *every* tort occurring on a vessel in navigable waters" should give rise to maritime jurisdiction, post, at 373, 111 L Ed 2d, at 306 (emphasis added), no matter how divorced the incident from the purposes that give rise to such jurisdiction. Justice Scalia is correct that his approach would be simpler to apply than the one embraced by Executive Jet and Foremost and that, all things being equal, simpler jurisdictional formulae are to be preferred. Such a preference, in fact, informs our refusal to consider the particulars of the fire on the Ultorian in determining whether maritime jurisdiction lies. See supra, at 363, 111 L Ed 2d, at 300. But the demand for tidy rules can go too far, and when that demand entirely divorces the jurisdictional inquiry from the purposes that support the exercise of jurisdiction, it *has* gone too far. In Foremost, the Court unanimously agreed that the purpose underlying the existence of federal maritime jurisdiction is the federal interest in the protection of maritime commerce, and that a case must implicate that interest to give rise to such jurisdiction. Compare Foremost, 457 US, at 674-675, 73 L Ed 2d 300, 102 S Ct 2654, with id., at 679-680, 73 L Ed 2d 300, 102 S Ct 2654 (Powell, J., dissenting). The only point of debate in Foremost was whether the Court was straying too far from that purpose by requiring no more than that the wrong have a potentially disruptive impact on maritime commerce and arise from an activity with a substantial relationship to traditional maritime activity. Justice Scalia's view that Foremost did not go far *enough* is thus plainly inconsistent with the unanimous view of the Court in Foremost.

[1e, 6] We now turn to the second half of the Foremost test, under which the party seeking to invoke maritime jurisdiction must show a substantial relationship between the activity giving rise to the incident and traditional maritime activity. As a first step, we must define the relevant activity in this case. Our cases have made clear that the relevant "activity" is defined not by the particular circumstances of the incident, but by the general conduct from which the incident arose. In Executive Jet, for example, the relevant activity was not a plane sinking in Lake Erie, but air travel generally. 409 US, at 269-270, 34 L Ed 2d 454, 93 S Ct 493. See also Foremost, supra, at 675-677, 73 L Ed 2d 300, 102 S Ct 2654 (relevant activity is navigation of vessels generally). This

[497 US 365]

focus on the general character of the activity is, indeed, suggested by the nature of the jurisdictional inquiry. Were courts required to focus more particularly on the causes of the harm, they would have to decide to some extent the merits of the causation issue to answer the legally and analytically antecedent jurisdictional question. Thus, in this case, we need not ascertain the precise cause of the fire to determine what "activity" Sisson was engaged in; rather, the relevant activity was the storage and maintenance of a vessel at a marina on navigable waters.[3]

[1f, 7a, 8a] Our final inquiry, then, is whether the storage and maintenance of a boat at a marina on navigable waters has a substantial relationship to a "traditional maritime activity" within the meaning of Executive Jet and Foremost.[4] Re-

3. In this case, all of the instrumentalities involved in the incident were engaged in a similar activity. The Ultorian and the other craft damaged by the fire were docked at a marina, and the marina itself provided docking and related services. The facts of Executive Jet and Foremost also reveal that all the relevant entities were engaged in a common form of activity. See Executive Jet Aviation, Inc. v City of Cleveland, 409 US 249, 34 L Ed 2d 454, 93 S Ct 493 (1972) (entities involved in the incident were engaged in nonmaritime activity of facilitating air travel); Foremost Ins. Co. v Richardson, 457 US 668, 73 L Ed 2d 300, 102 S Ct 2654 (1982) (entities were both engaged in navigation). Different issues may be raised by a case in which one of the instrumentalities is engaged in a traditional maritime activity, but the other is not. Our resolution of such issues awaits a case that squarely raises them.

4. [7b] The Circuits have interpreted this aspect of the jurisdictional inquiry variously. After Executive Jet, but before Foremost, the Fifth Circuit adopted a four-factor test for deciding whether an activity is substantially related to traditional maritime activity. The factors are "the functions and roles of the parties; the types of vehicles and instrumentalities involved; the causation and the type of injury; and traditional concepts of the role of admiralty law." Kelly v Smith, 485 F2d 520, 525 (1973). In other Circuits, this test has continued to dominate the landscape even in the wake of Foremost. See, e. g., Drake v Raymark Industries, Inc. 772 F2d 1007, 1015 (CA1 1985); Guidry v Durkin, 834 F2d 1465, 1471 (CA9 1987); Lewis Charters, Inc. v Huckins Yacht Corp. 871 F2d 1046, 1051 (CA11 1989). The Fourth Circuit appears to follow Kelly as well, although how closely is unclear. Compare Oman v Johns-Manville Corp., 764 F2d 224, 230, and n 3 (CA4 1985) (en banc) (stating that "a thorough analysis of the nexus requirement should include a consideration of *at least* [the Kelly factors]") (emphasis added), with Bubla v Bradshaw, 795 F2d 349, 351 (CA4 1986) (implicitly treating Kelly factors as exclusive). The precise state of the law in the Fifth Circuit after Foremost is also unclear. Compare Mollett v Penrod Drilling Co. 826 F2d 1419, 1426 (CA5 1987) (Mollett I) (applying, in addition to the Kelly factors, "(1) the impact of the event on maritime shipping and commerce (2) the desirability of a uniform national rule to apply to such matters and (3) the need for admiralty 'expertise' in the trial and decision of the case"), with Mollett v Penrod Drilling Co. 872 F2d 1221,

spondents

[497 US 366]

would have us hold that, at least in the context of noncommercial activity, only navigation can be characterized as substantially related to traditional maritime activity. We decline to do so. In Foremost, we identified navigation as an example, rather than as the sole instance, of conduct that is substantially related to traditional maritime activity. See 457 US, at 675, n 5, 73 L Ed 2d 300, 102 S Ct 2654. Indeed, had we intended to suggest

[497 US 367]

that navigation is the only activity that is sufficient to confer jurisdiction, we could have stated the jurisdictional test much more clearly and economically by stating that maritime jurisdiction over torts is limited to torts in which the vessels are in "navigation." Moreover, a narrow focus on navigation would not serve the federal policies that underlie our jurisdictional test. The fundamental interest giving rise to maritime jurisdiction is "the protection of maritime commerce," id., at 674, 73 L Ed 2d 300, 102 S Ct 2654, and we have said that that interest cannot be fully vindicated unless "*all* operators of vessels on navigable waters are subject to uniform rules of conduct," id., at 675, 73 L Ed 2d 300, 102 S Ct 2654. The need for uniform rules of maritime conduct and liability is not limited to navigation, but extends at least to any other activities traditionally undertaken by vessels, commercial or noncommercial.

[1g, 8b] Clearly, the storage and maintenance of a vessel at a marina on navigable waters is substantially related to "traditional maritime activity" given the broad perspective demanded by the second aspect of the test. Docking a vessel at a marina on a navigable waterway is a common, if not indispensable, maritime activity. At such a marina, vessels are stored for an extended period, docked to obtain fuel or supplies, and moved into and out of navigation. Indeed, most maritime voyages begin and end with the docking of the craft at a marina. We therefore conclude that, just as navigation, storing and maintaining a vessel at a marina on a navigable waterway is substantially related to traditional maritime activity.

[1h, 9] For the foregoing reasons, we conclude that the District Court has jurisdiction over Sisson's limitation claim pursuant to § 1333(1). Neither the District Court nor the

---

1224-1226 (CA5 1989) (Mollett II) (applying the Kelly factors without explicit mention of the extra factors identified in Mollett I).

Other Circuits have adopted different approaches. The Seventh Circuit in this case held that an activity must either be commercial or involve navigation to satisfy the "traditional maritime activity" standard. In re Complaint of Sisson, 867 F2d 341, 345 (1989). The Second Circuit directly applies our language requiring a substantial relationship to traditional maritime activity without applying any additional factors. See Keene Corp. v United States, 700 F2d 836, 844 (1983); Kelly v United States, 531 F2d 1144, 1147-1148 (1976). Finally, the Sixth Circuit has criticized the Seventh Circuit's analysis in this case as "an indefensibly narrow reading of Foremost Insurance," In re Young, 872 F2d 176, 178-179, n 4 (1989), but has not set forth in concrete terms the test it would apply, cf. Petersen v Chesapeake & Ohio R. Co. 784 F2d 732, 736 (1986).

The parties and various amici suggest that we resolve this dispute by adopting one of the Circuits' tests (or some other test entirely). We believe that, at least in cases in which all of the relevant entities are engaged in similar types of activity (cf. n 3, supra), the formula initially suggested by Executive Jet and more fully refined in Foremost and in this case provides appropriate and sufficient guidance to the federal courts. We therefore decline the invitation to use this case to refine further the test we have developed.

Court of Appeals have addressed the merits of Sisson's claim, and we therefore intimate no view on that matter. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

So ordered.

SEPARATE OPINION

[497 US 368]

Justice Scalia, with whom Justice White joins, concurring in the judgment.

I agree that the District Court has jurisdiction over this case under 28 USC § 1333(1) [28 USCS § 1333(1)], but I do not agree with the test the Court applies to conclude that this is so. Prior to Foremost Ins. Co. v Richardson, 457 US 668, 73 L Ed 2d 300, 102 S Ct 2654 (1982), our clear case law extended admiralty jurisdiction to all torts involving vessels on navigable waters. Foremost recited as applicable to such torts the test of "significant relationship to traditional maritime activity," which had been devised 10 years earlier for torts *not* involving vessels, see Executive Jet Aviation, Inc. v City of Cleveland, 409 US 249, 268, 34 L Ed 2d 454, 93 S Ct 493 (1972). In my view that test does not add any new substantive requirement for vessel-related torts, but merely explains *why all* vessel-related torts (which ipso facto have such a "significant relationship"), but only *some* non-vessel-related torts, come within § 1333(1). The Court's description of how one goes about determining whether a vessel-related tort meets the "significant relationship" test threatens to sow confusion in what had been, except at the margins, a settled area of the law.

The sensible rule to be drawn from our cases, including Executive Jet and Foremost, is that a tort occurring on a vessel conducting normal maritime activities in navigable waters—that is, as a practical matter, every tort occurring on a vessel in navigable waters—falls within the admiralty jurisdiction of the federal courts. Foremost is very clear that the Executive Jet requirement that the wrong bear a "significant relationship to traditional maritime activity" applies across the board. But it is not conclusive as to what is required to *establish* such a relationship in the case of torts aboard vessels. The "wrong" in Foremost not only occurred on a vessel *while it was engaged in* traditional maritime activity (navigating), but also consisted precisely of conducting that activity in a tortious fashion—and the discussion emphasized the latter reality. But the holding of the case did not establish (and could not, since the facts did not present the question) that the former alone would not suffice. In the case of a vessel it traditionally had sufficed, and Foremost gave no indication that it was revolutionizing admiralty jurisdiction. It is noteworthy, moreover, that a later case, Offshore Logistics, Inc. v Tallentire, 477 US 207, 91 L Ed 2d 174, 106 S Ct 2485 (1986), described the Executive Jet "relationship" requirement not with reference to the cause of the injury, but with reference to the activity that was being engaged in when the injury occurred: "[A]dmiralty jurisdiction is appropriately invoked here under traditional principles because the accident occurred on the high

seas and in furtherance of an activity [transporting workers to a drilling platform at sea] bearing a significant relationship to a traditional maritime activity." 477 US, at 218-219, 91 L Ed 2d 174, 106 S Ct 2485. I would

[497 US 374]

hold that a wrong which occurs (1) in navigable waters, (2) on a vessel, and (3) while that vessel is engaged in a traditional maritime activity, bears a significant relationship to a traditional maritime activity. A vessel engages in traditional maritime activity for these purposes when it navigates, as in Foremost, when it lies in dock, as in the present case, and when it does anything else (e. g., dropping anchor) that vessels normally do in navigable waters. It would be more straightforward to jettison the "traditional maritime activity" analysis entirely, and to return (for vessels) to the simple locality test—which in that context, as we observed in Executive Jet, "worked quite satisfactorily," 409 US, at 254, 34 L Ed 2d 454, 93 S Ct 493. But that would eliminate what Foremost evidently sought to achieve—the elegance of a general test applicable to *all* torts. That test will produce sensible results if interpreted in the manner I have suggested.

For these reasons, I concur in the judgment.

NOTES

1. A decision similar to *Sisson* is *Jerome B. Grubart Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S., 115 Sup. Ct. 1043 (1995). A vessel working a piling in the Chicago River could claim admiralty jurisdiction for limitation of liability purposes in an instance in which a piling went through the top of a tunnel. The result was the flooding of the Chicago tunnels by river water. This decision adopts a two-prong test situs and a connection with maritime activity.

2. Small pleasure craft have not been universally extended admiralty jurisdiction. *H²O Houseboat Vacations, Inc. v. Hernandez*, 103 F.3d 914 (9th Cir. 1996) concerned deaths aboard a houseboat moored on a lake in Arizona. No admiralty jurisdiction since the tort had no potential to disrupt maritime commerce. In *McDonough v. Nolley*, 729 F. Supp. 84 (S.D. Wash. 1990), "partly as an application of policy," a moored pleasure craft that burned was not within the ambit of admiralty jurisdiction because, "the traditional law of admiralty was not developed with small-craft pleasure vessels in mind." Similarly, in *Kunrether v. Outboard Marine Corp.*, 715 F. Supp. 1304 (E.D. Pa. 1989) -- a products liability action that resulted from an individual being struck and killed during snorkeling by a twenty-two foot motorboat -- admiralty jurisdiction was denied because the pleading failed to allege navigational error. Also in *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199, 116 S. Ct. 619, 133 L. Ed. 2d 578 (1996), the court noted admiralty jurisdiction, but held that state law controlled in a death action arising from a jet ski accident within state territorial waters. *Price v. Price*, 929 F.2d 131 (4th Cir. 1991) -- the court sustains admiralty jurisdiction for a recreational boating accident on a man-made reservoir. In Re Amtrak "Sunset Limited," 121 F.3d 1421 (11th Cir. 1997), *cert. denied*, 522 U.S. 1110, 118 S. Ct. 1041, 140 L. Ed 2d 106 (1998) involved a passenger train's fall from a trestle into a bayou in Alabama. Prior to the casualty, the trestle had been struck by a vessel. The court accepted the measure of damages set forth by Alabama, but turned to the general maritime law for the theories of liability. The court stated that the body of water was not used for commercial purposes, but it could be in the future. *Contra*, see *Guillory v. Outboard Motor Corp.*, 956 F.2d 114 (5th Cir. 1992). Furthermore, in *Sinclair v. Soniform, Inc.*, 935 F.2d 599 (3d Cir. 1991), the court

upheld admiralty jurisdiction for a scuba diver. *In accord, Neely v. Club Med Management Services, Inc.*, 63 F.3d 166, 178-80 (3d Cir. 1995). The requirement of an accident on navigable water is followed by the Fifth Circuit as a requisite to admiralty jurisdiction. You focus upon where the alleged wrong took effect rather than the locus of the tortious conduct. *Egrov v. Terriberry, Carroll*, 183 F.3d 453 (5th Cir. 1999). In *Bunge Corp. v. Freeport Marine Repair, Inc.*, 240 F.3d 919 (11th Cir. 2001) the court used an analysis based upon admiralty jurisdiction in determining that a partially completed hull was a "vessel" and therefore responsible for damage to a wharfing facility that was the consequence of an allision.

3. Cases based on contracts have often more easily been granted admiralty jurisdiction. *Norfok Southern Ry. Co. V. Kirby* 543 U.S. 14 (2004) held that an intermodal bill of lading where the casualty occurred from a train derailment was maritime. In Folksamerica v. Clean Water of New York Inc. 413 F.3d 307 (2nd Cir 2004) the court analyzed a mixed insurance policy in light of *Kirby* to determine whether the policy was sufficiently maritime in nature and held that it was. *Interpool Ltd. v. Char Yigh Marine Panama*, 890 F.2d 1453 (9th Cir. 1989), the court stated that a container lease qualifies as a maritime contract, and once you have a maritime contract federal law governs. See also, *Morewitz v. West of England Shipowners Mutual Protection & Indemnity Ass'n*, 896 F.2d 495 (11th Cir. 1990) -- court finds admiralty jurisdiction on an insurance contract pertaining to maritime risks; and *Cooper v. Loper*, 923 F.2d 1045 (3d Cir. 1991) -- court finds jurisdiction for breach of a stevedoring contract; *Commercial Union Insurance Co. v. Sea Harvest Seafood Co.*, 251 F.3d 1294 (10th Cir. 2001) – court sustains jurisdiction for insurance claim for cargo that moved by sea but was damaged ashore following inland transportation pursuant to a through bill of lading. Cf. *J.A.R., Inc. v. M/V LADY LUCILLE*, 963 F.2d 96 (5th Cir. 1992) -- admiralty does not have jurisdiction in cases involving the rights of parties under a contract to sell or to lease a vessel; *Herman Family Revocable Trust v. Teddy Bear*, 254 F.3d 802, 804 (9th Cir. 2001). Also, maritime rules pertaining to appeals pertain to those cases coming within the court's admiralty jurisdiction. *Sea Lane Bahamas, Ltd. v. Europa Cruises Corp.*, 188 F.3d 1317 (11th Cir. 1999).

Hartford Fire Insurance Co. v. Orient Overseas Container Lines (UK), Ltd., 230 F.3d 549, 554-56 (2d Cir. 2000) focuses upon the presence of admiralty jurisdiction in the instance of a "mixed contract," a contractual agreement covering both sea and land transportation. If the non-admiralty performance is "incidental," the court can treat the matter as one involving admiralty jurisdiction; if otherwise, the plaintiff must rely upon another basis in order to invoke action by a federal court.

4. The prevailing view is that accidents that occur on the wharf without the intervention of a vessel are not within admiralty jurisdiction. *Florio v. Olson*, 129 F.3d 678 (1st Cir. 1997); *Gaspard v. Amerada Hess Corp.*, 13 F.3d 165 (5th Cir. 1994); and *Higgins v. Leland*, 839 F. Supp. 374 (D.S.C. 1993).

5. An artificially-created lake exclusively within the territory of one state cannot form the basis of navigable waters for maritime jurisdiction. *Reeves Mobile Dredging & Pumping Co.*, 26 F.3d 1247 (3d Cir. 1994). *LeBlanc v. Cleveland*, 198 F.3d 353 (2d Cir. 1999) concerns a claim for personal injuries resulting from a collision between a kayak and a recreational motorboat in an area of the Hudson River above a dam, with numerous impassable rapids and falls. The court rejected a test relying upon the historical use of the river, and instead focused on the contemporary "improved" state. There was no maritime jurisdiction since the location of the collision was incapable of supporting commercial activities. Note also *Weaver v. Hollywood Casino - Aurora, Inc.*, 255 F.3d 379 (7th Cir. 2001) and *Cascianti v. Prueitt*, 109 F. Supp. 894 (N.D. Tenn. 2000). If the body of water is between two states or capable of interstate commerce, the navigable waters requirement for admiralty and maritime is met. *Mullenix v. United States*, 984 F.2d 101 (4th Cir. 1993); *Price v. Price*, 929 F.2d 131 (4th Cir. 1991). In *Atlanta School of Kayaking, Inc. v. Douglasville-Douglas County Water & Sewer Authority*, 981 F. Supp. 1469 (N.D. Ga. 1997), the defendant argued that the Dog River in Georgia was not "generally and commonly" used for carrying commerce; therefore, the river was not a navigable waterway. This argument was rejected with the court finding that the waterway was capable of bearing some forms of commerce.

6. Rule 9(h), FRCP, and the invocation of admiralty jurisdiction. *Foulk v. Donjon Marine Co.*, 144 F.3d 252 (3d Cir. 1998) concluded by means of a 2-1 vote that the pleading of "admiralty jurisdiction" was sufficient to have the litigation proceed in admiralty without a Rule 9(h) designation set forth on the pleadings. Also, *Keene v. Bouchard Transportation Co.*, 9 F. Supp. 2d 764 (S.D. Tex. 1998) holds that a Rule 9(h) designation did not deprive the plaintiff of a jury if additional jurisdictional allegations other than those of an admiralty and maritime nature were present. *See, also Sanders v. Seal Fleet, Inc.*, 998 F. Supp. 2d 729 (E.D. Tex. 1998). *Murphy v. Florida Keys Electric Co-Op. Ass'n. Inc.*, 329 F.3d 1311 (11th Cir. 2003) concluded that the plaintiff's denomination of an action as being of a maritime designation was not sufficient to cover a third-party defendant's compulsory counterclaim that did not have this designation. "Failure to identify a claim as an admiralty or maritime claim in these circumstances means that it is not one."

7. The court sustained admiralty jurisdiction with respect to a products liability claim brought by a passenger that occurred aboard a cruise ship; *In Re Horizon Cruises Litigation*, 101 F. Supp. 2d 204 (S.D.N.Y. 2000).

8. Federal courts have exclusive jurisdiction of maritime *in rem* remedies, and *in rem* rights must be enforced pursuant to the court's admiralty and maritime jurisdiction. Further, state statutes cannot modify substantive maritime remedies. *Diesel "Reporter," Inc. v. Islander Investments, Ltd.*, 271 F.3d 1318 (11th Cir. 2001). Also, a court sitting in admiralty applies federal maritime rules. *Federal Marine Terminals v. Worchester Peat Co.*, 262 F.3d 22 (1st Cir. 2001).

9. Some courts continue to state that one ingredient for admiralty jurisdiction is "the accident must affect maritime commerce", citing *Grubart, Delgado v. Reef Resort Ltd.*, 364 F.3d 642, (5th Cir. 2004).

10. *Taghadomi v. United States*, 401 F.3d 1080, 2005 W.L. 647740 (9th Cir. 2005), a case similar to *Anderson v. United States*, discussed *supra A-6*, concerns a wrongful death claim brought under the Federal Tort Claims Act (FTCA), where the Coast Guard was both allegedly

negligent in carrying out search and rescue operations, and also negligent in communicating with local authorities who were better equipped to effect a rescue. The Plaintiff was on his honeymoon in Hawaii with his foreign national wife. The couple rented a kayak and a storm swept them out onto the open seas. The wife fell overboard where she was attacked and killed by a shark, and the plaintiff was washed ashore on an uncharted island and stranded for three days before he was rescued.

The court explored the nuances when the government is liable by waiving its sovereign immunity, and discussed the differences between the FTCA, the Suits in Admiralty Act (SAA) and the Public Vessels Act (PVA). For the FTCA to apply, no other remedy can be available. One of the principle questions in *Taghadomi*, was whether admiralty jurisdiction applied. It did under a *Grubart* analysis. Because the tort was maritime, the PVA and SAA both were available, and consequently, the FTCA was not applicable. Under the PVA, there must be reciprocity between the law of the foreign national's country, and the law of the United States. Because the decedent's domicile (Iran) did not recognize these claims, the survivors were barred from bringing their claims under the PVA. The court recognized that the survivors might have had a claim under the Suits in Admiralty Act in regard to the "negligently communication" claim; however the SAA has a two-year statute of limitations, and the survivors had not timely filed. Even though the claimants were unable to use the SAA because of the statute of limitations, the FTCA was still unavailable because of circuit precedent (*T.J. Falgout Boats, Inc. v. United States*, 1975 AMC 343, 347, 508 F2d 855, 858 (9th Cir. 1974) (holding that a claim maintainable under the SAA but barred by the statute of limitations cannot be brought under the FTCA).

II. ***Abt v. Dickson Company of Texas*, 251 Fed. Appx. 293 2008 AMC 269 (5th Cir. October 17, 2007)**

Abt operated a waterfront crane specifically modified and positioned to load and unload vessels. After a vessel departed, and while the crane was being moved down the dock, part of the crane with plaintiff Abt in it, fell into the ship channel.

Abt filed suit in federal district court pursuant to admiralty jurisdiction. The Defendant moved to dismiss for lack of subject matter jurisdiction citing *Executive Jet Aviation*, 409 U.S. 249 (1972).

The district court held the case satisfied the locality test because Abt was injured once he hit the water and his injuries were likely exacerbated by the fact he remained in the channel for thirty minutes. The court also determined the incident could have potentially disrupted maritime commerce. However, the court concluded Abt failed to demonstrate his actions at the time of the incident were substantially related to maritime activity. The court indicated that Abt was merely moving the crane from one end of the dock to the other at the time of the accident, and was not servicing or even preparing to service a vessel. Abt's injuries while tragic were "only fortuitously and incidentally connected to navigable waters and bear no relationship to traditional maritime activity."

***Great American Ins. Co. Of New York v. Miller Marine Yacht Services, Inc.*, 2006 A.M.C. 2320 (N.D. Fla. 2006)**, was a claim for damage suffered to Plaintiff's vessel while it was being prepared for sale at Defendant's facility. There was no written agreement governing the relationship between the parties.

While rigging and preparing the vessel for launch, Defendant's employees installed a rudder assembly but apparently did not finish the installation. Allegedly due to some miscommunication, the vessel was launched before the rudder assembly was completed. After the launch, the vessel sank because the starboard rudder fell out.

The issue was whether the Court had maritime tort jurisdiction. The parties disagreed on the location of the alleged tort. Plaintiffs argued that the tort occurred on the water while Defendant argued the tort was the incomplete installation of the rudder which occurred on land. The Court held that even though the installation of the rudder took place on land, the effect of faulty installation occurred on navigable waters. The locality test of maritime jurisdiction was satisfied. The Court further held the locality test was met because the injury could only have happened while the vessel was operating on the water.

The Court next viewed the nexus test. The Court had no trouble finding the sinking of a vessel in the slip on navigable water could have an impact on maritime commerce.

Furthermore, the Court held that improperly installed equipment could create a danger to other vessels. Therefore, it was likely it had a potentially disruptive impact on maritime commerce.

Whether the incident had a substantial relationship to traditional maritime activity was a closer question. However, since it was conceivable that the proximate cause of the injury resulted from the launching of the vessel and not the construction of the vessel, the Court found it likely that admiralty jurisdiction exists.