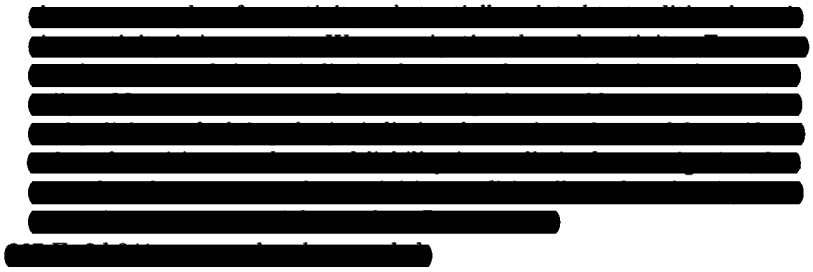
SISSON *v.* RUBY ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 88-2041. Argued April 23, 1990—Decided June 25, 1990

[redacted]



MARSHALL, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and BRENNAN, BLACKMUN, STEVENS, O'CONNOR, and KENNEDY, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment, in which WHITE, J., joined, *post*, p. 368.

Warren J. Marwedel argued the cause for petitioner. With him on the briefs was *Dennis Minichello.*

Robert J. Kopka argued the cause for respondents. With him on the brief was *Jeffrey S. Herden.**

JUSTICE MARSHALL delivered the opinion of the Court.

We must decide whether 28 U. S. C. § 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]

---

*Briefs of *amici curiae* urging reversal were filed for American Auto, Inc., by *Terence S. Cox;* and for the Maritime Law Association of the United States by *Richard H. Brown, Jr.*, and *Richard W. Palmer.*

John A. Flynn filed a brief for the Hatteras Yachts Division of Genmar Industries, Inc., as *amicus curiae* urging affirmance.

Solicitor General Starr, Deputy Solicitor General Shapiro, and *Stephen L. Nightingale* filed a brief for the United States as *amicus curiae.*

[1] Sisson has also argued throughout this litigation that the Limited Liability Act, Rev. Stat. § 4281 *et seq.*, 46 U. S. C. App. § 181 *et seq.* (1982 ed., Supp. V), 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 argues that the Admiralty Extension Act, 62 Stat. 496, 46 U. S. C. App.

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 U. S. C. App. § 183(a) (1982 ed., Supp. V), 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 F. 2d 341 (1989). We granted certiorari, 493 U. S. 1055 (1990), and now reverse.

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,

---

§ 740 (1982 ed., Supp. V), provides an independent basis for jurisdiction. We decline to consider that argument because it was not raised below.

36 (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 U. S. 249, 253–254 (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, 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. Rather, we held that jurisdiction was lacking because "the wrong [did not] bear a significant relationship to traditional maritime activity." *Id.*, at 268.

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 U. S. 668, 673 (1982). In *Foremost*, we approved this broader interpretation of *Executive Jet*. 457 U. S., at 673. *Foremost* involved a collision, on what we assumed to be navigable waters, *id.*, at 670, n. 2, 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 U. S., at 670–671.

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 U. S., at 674 (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 (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 (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 U. S., at 675, n. 5.

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.

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

Respondents' only argument 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.

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 U. S., at 675, n. 5. Likewise, in *Foremost* the Court noted "[t]he potential[ly] disruptive impact of a collision between boats on navigable waters." *Id.*, at 675. 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. Our

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

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 U. S., at 269–270. See also *Foremost*, *supra*, at 675–677 (relevant activity is navigation of vessels generally). This

---

[2] 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 (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. 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 U. S., at 674–675, with *id.*, at 679–680 (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*.

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]

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 U. S. 249 (1972) (entities involved in the incident were engaged in nonmaritime activity of facilitating air travel); *Foremost Ins. Co.* v. *Richardson*, 457 U. S. 668 (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] 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 F. 2d 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 F. 2d 1007, 1015 (CA1 1985); *Guidry* v. *Durkin*, 834 F. 2d 1465, 1471 (CA9 1987); *Lewis Charters, Inc.* v. *Huckins Yacht Corp.*, 871 F. 2d 1046, 1051 (CA11 1989). The Fourth Circuit appears to follow *Kelly* as well, although how closely is unclear. Compare *Oman* v. *Johns-Manville Corp.*,

spondents 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 U. S., at 675, n. 5. Indeed, had we intended to sug-

---

764 F. 2d 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 F. 2d 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 F. 2d 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 F. 2d 1221, 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 F. 2d 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 F. 2d 836, 844 (1983); *Kelly* v. *United States*, 531 F. 2d 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 F. 2d 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 F. 2d 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.

gest 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, 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. 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.

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.

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 Court of Appeals has 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.