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Throwing Admiralty Jurisdiction a Lifevest: Preserving Maritime Jurisdiction for Torts That Do Not Involve Vessels

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THROWING ADMIRALTY JURISDICTION A LIFEVEST: PRESERVING JURISDICTION FOR MARITIME TORTS THAT DO NOT INVOLVE VESSELS

Abstract: This Note examines the current test for establishing admiralty jurisdiction for in personam tort suits and the lower courts' recent departure from this test. Some lower courts have started to inappropriately read a vessel requirement into the test. This requirement causes a host of problems, including upsetting the spirit of the Extension of Admiralty Jurisdiction Act of 1948, forcing judges to decide issues of fact at the outset of litigation, and inadequately upholding admiralty jurisdiction's purpose of protecting maritime commerce. The best solution to this problem would be for Congress to pass a new admiralty jurisdiction statute that incorporates the 1948 Act and the Supreme Court's current test for admiralty jurisdiction, and explicitly states that a vessel's involvement is not required to establish admiralty jurisdiction.

INTRODUCTION

Robert Duplechin and Terry Lee Sinclair both enjoyed recreational SCUBA diving.[1] During one such dive, both Duplechin and Sinclair contracted "the bends"—a common diver ailment—allegedly due to negligent instruction and care.[2] Duplechin sued the dive shop that taught him how to dive,[3] and Sinclair sued the vessel that brought him to the dive location.[4] Despite having similar claims, the federal court hearing Duplechin's case denied admiralty jurisdiction,[5] whereas the federal court hearing Sinclair's case granted jurisdiction.[6]

The inequitable discrepancy between Duplechin's and Sinclair's cases is not uncommon under some lower federal courts' improper application of the Su-

[1] *See* Sinclair v. Soniform, Inc., 935 F.2d 599, 600 (3d Cir. 1991); Duplechin v. Prof'l Ass'n for Diving Instructors, 666 F. Supp. 84, 85 (E.D. La. 1987).

[2] *See Sinclair*, 935 F.2d at 600; *Duplechin*, 666 F. Supp. at 85; *infra* note 147 and accompanying text (describing the bends).

[3] *Duplechin*, 666 F. Supp. at 85.

[4] *Sinclair*, 935 F.2d at 600.

[5] *See Duplechin*, 666 F. Supp. at 88 (holding that diving does not involve vessels in navigation and thus denying admiralty jurisdiction).

[6] *See Sinclair*, 935 F.2d at 600 (holding that the plaintiff's allegations against the crew of a vessel arose from the crew "engag[ing] in a quintessential maritime activity affecting commerce—the transport and care of paying passengers" and thus granting jurisdiction).

preme Court's and Congress's guidelines for establishing admiralty jurisdiction.[7] Federal courts have exclusive jurisdiction to resolve admiralty disputes.[8] The current test for establishing admiralty jurisdiction for in personam tort suits, as laid out by the U.S. Supreme Court and Congress, does not require a vessel to be involved in the tort.[9] Rather, the current test for admiralty jurisdiction includes both a location and a connection element.[10] To satisfy the location element, the tort must occur on navigable water, or, if the injury occurred on land, then a vessel on navigable water must have caused the injury.[11] To satisfy the connection element, the tort must be of the type that could potentially disrupt maritime commerce, and the type of activity that gave rise to the tort must bear a substantial relationship to traditional maritime activities.[12] A strict application of this test may have granted Duplechin jurisdiction.[13] Nevertheless, despite a vessel not being required for

[7] *See, e.g.*, Bd. of Comm'rs v. M/V Belle of Orleans, 535 F.3d 1299, 1306, 1313 (11th Cir. 2008) (requiring the presence of a vessel for admiralty jurisdiction), *abrogated by* Lozman v. City of Riviera Beach Fla., 133 S. Ct. 735 (2013); De La Rosa v. St. Charles Gaming Co., 474 F.3d 185, 188 (5th Cir. 2006) (same); Duplantis v. Northrop Grumman, No. 10-1575, 2012 WL 2369348, at *2–3 (W.D. La. June 20, 2012) (same); Miles v. VT Halter Marine, Inc., 792 F. Supp. 2d 919, 924 (E.D. La. 2011) (same); *infra* notes 86–116 and accompanying text (discussing how many lower courts have begun to inappropriately read a vessel requirement into the test for establishing admiralty jurisdiction).

[8] Judiciary Act of 1789, ch. 20, § 9, 1 Stat. 73, 76–77. Claims may be brought in state court under the Judiciary Act's "saving to suitors" clause. Norman M. Stockman, *Admiralty Law for the Land-Side Alabama Lawyer*, 71 ALA. LAW. 296, 300 (2010); *see* Judiciary Act § 9. This clause allows plaintiffs who could sue in federal court under admiralty jurisdiction to bring suit in either state court or federal court under another theory of federal jurisdiction, such as diversity. Stockman, *supra*, at 300. Nevertheless, state courts hearing claims under the saving to suitors clause must apply federal admiralty law. *Id.*

[9] *See* Extension of Admiralty Jurisdiction Act, 46 U.S.C. § 30101 (2006) (expanding admiralty jurisdiction to include land-based injuries that are caused by a vessel on navigable water, but saying nothing about admiralty jurisdiction for injuries that occur on navigable water without a vessel); Grubart v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 534 (1995) (affirming the Supreme Court's test for admiralty jurisdiction that was laid out in 1990 in *Sisson v. Ruby*, which does not require that a vessel be involved to establish jurisdiction); Sisson v. Ruby, 497 U.S. 358, 360–67 (1990) (holding that to establish admiralty jurisdiction, the plaintiff must satisfy both a location and a connection test—neither of which requires a vessel's presence); *see also infra* notes 62–65 and accompanying text (explaining that Congress passed the Extension of Admiralty Jurisdiction Act to expand admiralty jurisdiction while preserving admiralty jurisdiction for torts occurring on navigable water without a vessel). In personam claims are made against individuals, such as a boat's captain or owner, as opposed to in rem claims, which are made against the boat itself. *Belle of Orleans*, 535 F.3d at 1305; *see* Crimson Yachts v. Betty Lyn II Motor Yacht, 603 F.3d 864, 868 (11th Cir. 2010); *infra* note 26 (discussing the differences between in personam and in rem suits further).

[10] *Grubart*, 513 U.S. at 534; *Sisson*, 497 U.S. at 360–67.

[11] *Grubart*, 513 U.S. at 534; *Sisson*, 497 U.S. at 360–61; *see* Extension of Admiralty Jurisdiction Act § 30101.

[12] *Grubart*, 513 U.S. at 534; *Sisson*, 497 U.S. at 361–67.

[13] *Compare Duplechin*, 666 F. Supp. at 86 (explaining that the plaintiff contracted the bends while SCUBA diving in the navigable waters of the Gulf of Mexico), Hartley v. City of New York, 621 N.Y.S.2d 789, 793–94 (Sup. Ct. 1994) (holding that injured SCUBA divers can potentially disrupt maritime commerce), Phyllis G. Coleman, *SCUBA Diving Injuries: Causes, Remedies, and De-*

admiralty jurisdiction, many lower courts, like the court hearing Duplechin's suit, have started to insist that the tort involve a vessel to establish admiralty jurisdiction.[14]

This Note examines the consequences of introducing a vessel requirement to the admiralty jurisdiction test and argues that such a requirement undermines admiralty jurisdiction's purpose.[15] Part I describes admiralty jurisdiction's purpose and development into its current two-part test.[16] Part II then examines how some lower courts have abandoned a strict application of this two-part test in favor of a vessel requirement test.[17] Finally, Part III explains that requiring a vessel inadequately fulfills admiralty jurisdiction's purpose of protecting maritime commerce.[18] This Note asserts that a strict application of the current two-part test better protects maritime commerce than a vessel requirement test and that Congress or the Supreme Court should intervene to prevent federal courts from requiring a vessel's involvement for admiralty jurisdiction.[19]

I. ADMIRALTY JURISDICTION'S PURPOSE AND DEVELOPMENT IN THE UNITED STATES

This Part discusses admiralty jurisdiction's role in the United States and how the Supreme Court and Congress have developed the current test for establishing admiralty jurisdiction.[20] Section A explains that admiralty jurisdiction and admiralty law were created to protect maritime commerce because it requires special protections.[21] Section B then describes admiralty jurisdiction's

fenses, 29 J. MAR. L. & COM. 519, 533–37 (1998) (discussing marine tourism, including SCUBA lessons and SCUBA tours), *and id.* at 537 n.126, 544 (explaining that most divers can satisfy the test for admiralty jurisdiction and noting that not all divers launch from vessels), *with supra* notes 9–12 and accompanying text (outlining the current Supreme Court test for admiralty jurisdiction).

[14] *See De La Rosa*, 474 F.3d at 188 (denying admiralty jurisdiction because a permanently moored floating casino involved in the incident was not a vessel); *Duplantis*, 2012 WL 2369348, at *2–3 (denying admiralty jurisdiction because the boat involved in the incident was incomplete and thus not a vessel); *Miles*, 792 F. Supp. 2d at 924 (denying admiralty jurisdiction because a barge under construction that was involved in the incident was not a vessel); David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 36 TUL. MAR. L.J. 425, 489 (2012); *supra* note 9–12 and accompanying text (illustrating how the current Supreme Court test for admiralty jurisdiction does not require the involvement of a vessel).

[15] *See infra* notes 20–172 and accompanying text.

[16] *See infra* notes 20–85 and accompanying text.

[17] *See infra* notes 86–116 and accompanying text.

[18] *See infra* notes 117–172 and accompanying text.

[19] *See infra* notes 117–172 and accompanying text.

[20] *See infra* notes 21–85 and accompanying text.

[21] *See infra* notes 23–46 and accompanying text.

dynamic development into the current two-part test that includes both a locality and a connection element.[22]

A. Admiralty Jurisdiction: A Prerequisite for Applying Admiralty Law and Protecting Maritime Commerce

To sue for relief under admiralty law, a claim must satisfy the test for admiralty jurisdiction.[23] This is because jurisdiction generally establishes a court's power to resolve a dispute,[24] and thus, admiralty jurisdiction is required to apply admiralty law.[25] Admiralty law protects maritime commerce and its participants by governing conduct on navigable waters.[26] If a court does not have admiralty jurisdiction, it cannot resolve a dispute involving admiralty law.[27]

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[22] *See infra* notes 47–85 and accompanying text.

[23] E. River S.S. Corp. v. TransAmerica Delaval, Inc., 476 U.S. 858, 864 (1986) ("With admiralty jurisdiction comes the application of substantive admiralty law."); *see* David W. Robertson, *How the Supreme Court's New Definition of "Vessel" Is Affecting Seaman Status, Admiralty Jurisdiction, and Other Areas of Maritime Law*, 39 J. MAR. L. & COM. 115, 144 (2008) (noting that if a claim cannot establish admiralty jurisdiction, a federal court cannot apply admiralty law to the claim); Graydon S. Staring, *The Admiralty Jurisdiction of Torts and Crimes and the Failed Search for Its Purpose*, 38 J. MAR. L. & COM. 433, 453 (2007) (explaining that admiralty law accompanies admiralty jurisdiction); Stockman, *supra* note 8, at 298 (observing that with any admiralty issue, the parties must start by analyzing whether admiralty jurisdiction exists). Claims heard in state courts under admiralty law (pursuant to the saving to suitors clause) must also meet the federal test for admiralty jurisdiction before admiralty law will apply. *See* Stockman, *supra* note 8, at 300.

[24] *See Sisson*, 497 U.S. at 375 (Scalia, J., concurring) (explaining that a court's ruling is not binding if the court did not have subject matter jurisdiction over the suit (quoting Hanover Star Milling Co. v. Metcalf, 240 U.S. 403, 426 (1916) (Holmes, J., concurring)); 1 STEVEN F. FRIEDELL, BENEDICT ON ADMIRALTY § 101, at 7-1 (7th rev. ed. 2013) ("Jurisdiction is the power to adjudicate a case upon its merits and dispose of it as justice may require.").

[25] *See E. River S.S. Corp.*, 476 U.S. at 864; Robertson, *supra* note 23, at 144; Staring, *supra* note 23, at 453.

[26] *See* Foremost Ins. Co. v. Richardson, 457 U.S. 668, 674 (1982) (explaining that admiralty jurisdiction's purpose is to protect maritime commerce); BLACK'S LAW DICTIONARY 1055 (9th ed. 2009) (defining "maritime law" as "[t]he body of law governing marine commerce and navigation, the carriage at sea of persons and property, and marine affairs in general; the rules governing contract, tort, and workers'-compensation or relating to commerce on or over water"). Note that the terms "admiralty law" and "maritime law" are often used interchangeably. *See* BLACK'S LAW DICTIONARY, *supra*, at 50 (failing to define admiralty law and instead directing readers to the definition of admiralty, which is partially defined as "[t]he system of jurisprudence that has grown out of the practice of admiralty courts," and the definition of maritime law). Admiralty law governs three types of cases: tort suits, contract suits, and workers' compensation suits. Stockman, *supra* note 8, at 298. Federal courts apply a different test to each type of claim to determine if they have jurisdiction. *Id.* at 298, 300. To establish admiralty jurisdiction for a maritime contract suit, the contract's subject matter must be maritime in nature. *Id.* at 298 (quoting Misener Marine Constr., Inc. v. Norfolk Dredging Co., 594 F.3d 832, 837 (11th Cir. 2010)). To establish a claim for workers' compensation, the individual must qualify as a seaman under the Jones Act. 46 U.S.C. § 30104 (2006 & Supp. V 2011); Stockman, *supra* note 8, at 300. This Note exclusively addresses the test for determining admiralty jurisdiction in tort suits. *See infra* notes 27–172 and accompanying text.

Admiralty law was created to protect maritime commerce because maritime commerce was essential to the early United States' economy.[28] Early colonies' economies depended heavily on commercial maritime activities such as shipbuilding, fishing, shipping, and whaling.[29] Today, maritime commerce remains crucial to the United States' economy and still necessitates admiralty law protection.[30]

Admiralty tort suits may either be brought in personam or in rem. *See, e.g.*, Am. Dredging Co. v. Miller, 510 U.S. 443, 446–47 (1994) (explaining the difference between in rem and in personam suits); *Crimson*, 603 F.3d at 868; *Belle of Orleans*, 535 F.3d at 1305. In personam suits and in rem suits have different, though overlapping requirements for establishing admiralty jurisdiction. *See Am. Dredging*, 510 U.S. at 446–47; *Crimson*, 603 F.3d at 868; *Belle of Orleans*, 535 F.3d at 1305–06. Specifically, to sue in rem, one must obtain a maritime lien on a boat. *Crimson*, 603 F.3d at 868; Stockman, *surpa* note 8, at 302. To obtain a maritime lien, the boat must be classified as a vessel. *See Crimson*, 603 F.3d at 868. As this Note explains, to sue in personam, a vessel does not have to be involved. *See infra* notes 117–172 and accompanying text (arguing that a vessel-based test inadequately protects maritime commerce).

[27] *See E. River S.S. Corp.*, 476 U.S. at 864; Robertson, *supra* note 23, at 144; Staring, *supra* note 23, at 453.

[28] *See Foremost*, 457 U.S. at 674–75, 677 (explaining that the purpose of admiralty jurisdiction is "unquestionably" to protect maritime commerce and discussing the importance of broadly granting admiralty jurisdiction to protect this crucial industry); Price v. Price, 929 F.2d 131, 133 (4th Cir. 1991) (stating that admiralty law developed to facilitate commercial shipping); Armand M. Paré, Jr., *Admiralty Jurisdiction at the Millennium*, 24 TUL. MAR. L.J. 187, 201–02 (1999) (arguing that recent Supreme Court cases involving admiralty jurisdiction reinforce the proposition that admiralty jurisdiction was established to promote and protect maritime commerce); Ronen Perry, *Differential Preemption*, 72 OHIO ST. L.J. 821, 823–25 (2011) (discussing the importance of maritime commerce to the United States' economy); Staring, *supra* note 23, at 467–68 (discussing maritime commerce and stating that the need to protect maritime commerce is the historic and continued basis for admiralty law).

The United States was not the first civilization to develop admiralty law. *See* Gordon W. Paulsen, *An Historical Overview of the Development of Uniformity in International Maritime Law*, 57 TUL. L. REV. 1065, 1068 (1983) (discussing the Rhodian Sea Laws from 500 to 300 B.C.E.); Rod Sullivan, *A Constitutional Approach to Maritime Personal Injury*, 43 J. MAR. L. & COM. 393, 406 (2012) (discussing English admiralty courts that predated the American Revolution); Joseph C. Sweeney, *The Silver Oar and Other Maces of the Admiralty: Admiralty Jurisdiction in America and the British Empire*, 38 J. MAR. L. & COM. 159, 159 (2007) (analyzing English maritime law from 1701). As far back as the Babylonians, societies have developed admiralty regulations. NICHOLAS J. HEALY ET AL., CASES AND MATERIALS ON ADMIRALTY 1 (5th ed. 1974); Paulsen, *supra*, at 1068. Similarly, the earliest European settlers in the Americas recognized that maritime commerce needed protection. *See* Staring, *supra* note 23, at 445 (explaining that the colonies established admiralty courts with broad admiralty jurisdiction); Sweeney, *supra*, at 163 (discussing how colonies created admiralty courts); *see also* Fabio Arcila, Jr., *The Framers' Search Power: The Misunderstood Statutory History of Suspicion & Probable Cause*, 50 B.C. L. REV. 363, 379 (2009) (discussing the colonies' vice-admiralty courts).

[29] *Maritime Commerce*, NAT'L PARK SERV., http://www.nps.gov/nr/travel/maritime/commerce.htm, *archived at* http://perma.cc/G5MG-TKY6 (last visited Mar. 23, 2014); *Maritime Commerce*, SEA GRANT, http://www.providenceri.com/narragansettbay/maritime_commerce.html, *archived at* http://perma.cc/AFC6-ZSMB (last visited Mar. 23, 2014).

[30] *See* Perry, *supra* note 28, at 823–25; Staring, *supra* note 23, at 467–68. *See generally About the MLA*, MAR. L. ASS'N, http://www.mlaus.org, *archived at* http://perma.cc/J587-S8ZQ (last visited Mar. 23, 2014) (explaining that the Maritime Law Association's purpose remains "to advance reforms in the Maritime Law of the United States . . . to promote uniformity in its enactment and interpreta-

Maritime commerce needs a unique body of law because its participants face unique difficulties.[31] Admiralty law developed to address these unique perils, which include injured seamen, maritime liens, vessel ownership, collisions, salvage, and pirates.[32] In many instances, state statutes and state common law do not provide causes of action for injuries caused by these unique dangers, so a party that cannot establish admiralty jurisdiction may not have a remedy.[33] In contrast, the Death on the High Seas Act and general maritime law provide wrongful death claims for victims that perish at sea, but only when admiralty jurisdiction is present.[34] Additionally, admiralty law recognizes certain defenses, such as contributory negligence, that some states do not.[35] As a final protection,

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tion"). In 2012, fishing, forestry, and related activities in the United States generated over $34 billion in value. *BEA: Gross-Domestic-Product-(GDP)-by-Industry Data*, U.S. Department of Commerce, Bureau of Economic Analysis, http://www.bea.gov/industry/gdpbyind_data.htm, *archived at* http://perma.cc/GN85-CXJL (last updated Feb. 14, 2014). That same year, water transportation generated over $14 billion in value—more than double the output it generated in 1998. *Id.*

[31] *See* McDermott Int'l, Inc. v. Wilander, 498 U.S. 337, 354 (1991) (recognizing that seamen require special protection because of "the special hazards and disadvantages" seamen encounter); Harden v. Gordon, 11 F. Cas. 480, 483, 485 (C.C.D. Me. 1823) (No. 6047) (opining that "[s]eamen are by the peculiarity of their lives liable to sudden sickness from change of climate, exposure to perils, and exhausting labour" and that "they are unprotected and need counsel"); Sweeney, *supra* note 28, at 165 (noting that early admiralty cases involved seaman wage disputes, injuries, maritime liens, collisions, piracy, and other issues unique to maritime participants). *See generally Foremost*, 457 U.S. at 674–75 (discussing the importance of protecting maritime commerce).

[32] *See* Sweeney, *supra* note 28, at 165.

[33] *Cf.* Moragne v. States Marine Lines, Inc., 398 U.S. 375, 392–91, 409 (1970) (establishing a wrongful death claim under general maritime law for wrongful deaths occurring within three nautical miles of the United States to offer more uniform protection to victims than state wrongful death statutes provided); Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 408–09 (1953) (noting that admiralty law has developed a "fairer and more flexible rule" regarding contributory negligence than Pennsylvania's common law approach and applying admiralty law's rule so that a carpenter, who was injured while working on a vessel, could maintain his claim against the vessel owner despite his own negligence); Kuntz v. Windjammer "Barefoot" Cruises, Ltd., 573 F. Supp. 1277, 1284 (W.D. Pa. 1983) (holding that survivors can bring a survival action in general maritime law—a claim not available under many states' statutes); Stockman, *supra* note 8, at 300 (noting that unlike Alabama, admiralty law recognizes comparative fault).

[34] *See* 46 U.S.C. § 30302 (2006) (providing a wrongful death claim under admiralty law for victims on the high seas more than three nautical miles away from the United States); *Moragne*, 398 U.S. at 392–91, 409 (providing a wrongful death claim under general maritime law for victims who perish within three nautical miles of the United States); *see also Kuntz*, 573 F. Supp. at 1284 (clarifying that a victim may be able to recover under a state's wrongful death statute, but opining that admiralty law provides additional protections).

[35] *See Pope & Talbot*, 346 U.S. at 408–09 (noting that admiralty law may be followed in lieu of Pennsylvania's common law contributory negligence ban); Stockman, *supra* note 8, at 300 (comparing admiralty law to Alabama's common law). Five jurisdictions (Alabama, District of Columbia, Maryland, North Carolina, and Virginia) still apply a pure contributory negligence rule, so if the plaintiff is even remotely to blame, he or she cannot recover anything if the law of one of those jurisdictions applies. MATTHIESEN, WICKERT & LEHRER, S.C., CONTRIBUTORY NEGLIGENCE/COMPARATIVE FAULT LAWS IN ALL 50 STATES (rev. 2014), *available at* http://www.mwl-law.com/wp-content/uploads/2013/03/contributory-negligence-comparative-fault-laws-in-all-50-states.pdf, *archived at* http://

admiralty law's statute of limitations for tort suits is three years, as compared to most states' two-year statute of limitations.[36]

Admiralty law must be uniform if it is to adequately protect maritime commerce.[37] The Framers of the Constitution and Congress intended federal courts to have the exclusive power to resolve admiralty disputes to ensure uniformity because they believed that uniform laws best promoted and protected maritime commerce.[38] Thus, to protect maritime commerce,[39] Article III, Section 2 of the Constitution and Section 9 of the Judiciary Act of 1789 grant federal courts exclusive jurisdiction over civil suits that arise in admiralty and maritime jurisdiction.[40]

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perma.cc/R7FV-N9LH. Thirty-three states apply a modified comparative fault rule, so if the plaintiff is more than fifty or fifty-one percent at fault, then he or she cannot collect any damages. *Id.*

[36] Stockman, *supra* note 8, at 300.

[37] *See* Lizabeth L. Burrell, *Current Problems in Maritime Uniformity*, 5 U.S.F. MAR. L.J. 67, 69 (1992); Perry, *supra* note 28, at 824; Thomas S. Rue, *The Uniqueness of Admiralty and Maritime Law*, 79 TUL. L. REV. 1127, 1147 (2005).

[38] Rue, *supra* note 37, at 1147–48 (explaining that the Constitution's drafters granted exclusive admiralty jurisdiction to federal courts to promote uniformity); *see* Staring, *supra* note 23, at 455–56 (stating that the Framers understood that leaving admiralty law to each state would be "impractical" and "disorderly"); Sullivan, *supra* note 28, at 408–10 (describing Alexander Hamilton's belief that state courts were less competent to hear admiralty cases, which often depended on international law). The Supreme Court's right to hear admiralty claims does appear to have been debated during the Constitutional Convention. Staring, *supra* note 23, at 456 (noting that James Madison only mentions admiralty law twice in his copious notes on the Convention). After the Convention, Alexander Hamilton—a maritime attorney—wrote about federal admiralty jurisdiction's acceptance in the Federalist papers. THE FEDERALIST NOS. 80, at 478 (Alexander Hamilton) (Clinton Rossiter ed., 1961) ("The most bigoted idolizers of state authority have not thus far shown a disposition to deny the national judiciary the cognizance of maritime causes.").

[39] *See* Rue, *supra* note 37, at 1147–48 (noting that the founders and Congress granted exclusive jurisdiction for admiralty suits to promote uniform admiralty law); Staring, *supra* note 23, at 455–56 (noting that the founders did not heavily debate granting federal courts jurisdiction over admiralty issues and stating that it would have been "impractical" and "disorderly" to fragment admiralty law over the many states).

[40] *See* U.S. CONST. art. III, § 2; Judiciary Act of 1789, ch. 20, § 9, 1 Stat. 73, 76–77. *See generally* State *ex rel.* Guste v. MN Testbank, 752 F.2d 1019, 1032 (5th Cir. 1985) (opining that maritime commerce is best protected by uniform admiralty laws); David J. Bederman & John E. Weirwille, *The Contemporary Contours of Admiralty Jurisdiction*, 31 TUL. MAR. L.J. 291, 292 (2007) (noting that admiralty jurisdiction is the only specific grant of subject matter jurisdiction). Article III, Section 2 of the Constitution allows the Supreme Court and lower federal courts to hear "all cases of admiralty and maritime jurisdiction." U.S. CONST. art. III, § 2. Section 9 of the Judiciary Act of 1789 established the lower federal courts and granted the federal courts exclusive jurisdiction over civil suits that arise in "admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation or trade of the United States, where the seizures are made, on waters which are navigable from the sea by vessels of ten or more tons burthen, . . . as well as upon the high seas." Judiciary Act § 9. Congress codified these rights in 28 U.S.C. § 1333, which grants federal courts "original jurisdiction" of "[a]ny civil case of admiralty or maritime jurisdiction." 28 U.S.C. § 1333(1) (2012). Admiralty jurisdiction is a form of subject matter jurisdiction, like diversity jurisdiction and federal question jurisdiction. *See* 28 U.S.C. §§ 1331–1332 (2012); Bederman & Weirwille, *supra*, at 292 (explaining that admiralty jurisdiction was the only specific grant of subject matter jurisdiction in the Constitution). Subject

Exclusive federal admiralty jurisdiction attempts to ensure that admiralty law is applied uniformly.[41] For example, because a court must have admiralty jurisdiction to apply admiralty law, federal courts have the exclusive power to interpret admiralty law.[42] One scholar notes that uniformity allows for the most administrable, fair, and predictable application of admiralty law.[43] An administrable, fair, and predictable system best protects maritime commerce because it reduces the costs of litigation and statutory compliance, creates legitimacy by resolving analogous cases in the same manner, and allows economic planning and contracting of risk.[44] Furthermore, scholars and courts reason that uniform admiralty law within the United States promotes uniformity of admiralty law on a global scale.[45] Global uniformity decreases the costs of participating in maritime commerce and promotes peace among maritime nations.[46]

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matter jurisdiction determines the power of a federal court to hear a case. *See* Bederman & Weirwille, *supra*, at 292 (explaining that courts can only adjudicate issues that they have power over). Because admiralty jurisdiction establishes a court's power to hear a case, a proper test for determining whether a court has admiralty jurisdiction is necessary to avoid wasting judicial resources. *See Sisson*, 497 U.S. at 375 (Scalia, J., concurring) (warning that a test for admiralty jurisdiction that creates uncertainty would waste judicial resources by requiring courts to mistakenly try cases over which they lack jurisdiction (quoting *Hanover*, 240 U.S. at 426 (Holmes, J., concurring))). Without a clear test for admiralty jurisdiction, lengthy and expensive cases could be tried, only to be later reversed for lack of jurisdiction. *See id.* (stating that "a trial judge ought to be able to tell easily and fast what belongs in his court and what has no business there").

[41] Rue, *supra* note 37, at 1147–48; *see* Staring, *supra* note 23, at 455–56.

[42] *See* Judiciary Act § 9 (vesting exclusive jurisdiction over admiralty suits in federal courts); Staring, *supra* note 23, at 453 (explaining that admiralty law accompanies admiralty jurisdiction); Stockman, *supra* note 8, at 298 (observing that with any admiralty issue, the parties must start by analyzing whether admiralty jurisdiction exists). *But see* S. Pac. Co. v. Jensen, 244 U.S. 205, 216 (1917) (stating that state legislatures can affect admiralty law in some situations), *superseded by statute*, Longshoreman and Harbor Workers' Compensation Act of 1972, Pub. L. No. 92-576, 86 Stat. 1251 (1927) (codified as amended at 33 U.S.C. §§ 901–950 (2006)), *as recognized in* Dir., Office of Workers' Comp. Programs, U.S. Dep't of Labor v. Perini N. River Assocs., 459 U.S. 297 (1983); Bederman & Wierwille, *supra* note 40, at 292 (explaining that due to the saving to suitors clause, state courts can influence admiralty law in some contexts).

[43] Perry, *supra* note 28, at 857–58.

[44] *See id.*

[45] Robert D. Peltz, *The Myth of Uniformity in Maritime Law*, 21 TUL. MAR. L.J. 103, 121 (1996) (discussing the need for uniformity in the United States to promote international uniformity in admiralty law); *see* The Lottawanna, 88 U.S. (21 Wall.) 558, 572 (1874) (observing that although each country may form its own maritime regulations, with regard to admiralty law, "there should be a uniform law founded on natural reason and justice"); Sullivan, *supra* note 28, at 409–10 (discussing Alexander Hamilton's insistence that federal courts have exclusive power to administer admiralty law to ensure conformity with international law).

[46] *See* Sullivan, *supra* note 28, at 409 (explaining Alexander Hamilton's position that granting federal courts exclusive jurisdiction over admiralty issues would promote peace with foreign countries because federal judges were better qualified to apply international standards than state juries); *The Lottawanna*, 88 U.S. (21 Wall.) at 572–73 (emphasizing the convenience of uniformity for participating in maritime commerce); *cf. id.* (discussing the need for uniform maritime law because maritime commerce was an international commercial interaction); Patrick Griggs, *Uniformity of Maritime*

B. Congress and the Supreme Court Develop a Test for Admiralty Jurisdiction to Address New Perils That Threaten Maritime Commerce

The test for admiralty jurisdiction has continuously developed.[47] Federal courts had to develop a test for establishing admiralty jurisdiction because neither the Founders nor Congress specified what admiralty jurisdiction entailed under the Constitution or the Judiciary Act of 1789.[48]

Originally, the courts established a locality test for admiralty jurisdiction over maritime tort suits based exclusively on the location of the tort.[49] To establish admiralty jurisdiction, the tort had to have occurred on the "high seas" or within the "ebb and flow of the tide."[50] The ebb and flow of the tide originally only included waters closely connected to the ocean, but as river transportation increased, federal courts expanded the interpretation of the tides' flow upstream to include rivers.[51] Eventually, in 1851, the Supreme Court held that Congress's grant of admiralty jurisdiction to the federal courts pertained to all public navigable water, thereby also including lakes and rivers that did not wax and wane with the tides.[52] Thereafter, the Supreme Court held that water is navigable if it may be used in commerce.[53]

Law—An International Perspective, 73 TUL. L. REV. 1551, 1553 (1999) (discussing modern nations' need to balance national regulations with international solutions); Peltz, *supra* note 45, at 121 (describing maritime commerce's international nature).

[47] *See infra* notes 48–85 and accompanying text.

[48] *See* Paré, *supra* note 28, at 189 (explaining that after adopting the Constitution, federal courts still looked to English admiralty law to develop rules for admiralty jurisdiction); Robert C. Adams, Note, *Vaguely Refining Admiralty Tort Jurisdiction:* Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 20 TUL. MAR. L.J. 163, 164 (1995) (explaining that admiralty jurisdiction had to develop through case law because neither Congress nor the Constitution laid out a clear test).

[49] *See* Thomas v. Lane, 23 F. Cas. 957, 960 (C.C.D. Me. 1833) (No. 13,902) (characterizing this as the general test that courts applied).

[50] *Id.*

[51] *See* Waring v. Clarke, 46 U.S. (5 How.) 441, 497 (1847) (Woodbury, J., dissenting) (describing this approach taken by federal courts).

[52] The Propeller Genesee Chief v. Fitzhugh, 53 U.S. (12 How.) 443, 443–44, 457 (1851).

[53] *See, e.g.*, The Montello, 87 U.S. (20 Wall.) 430, 436 (1874); The Daniel Ball, 77 U.S. (10 Wall.) 557, 563 (1870), *superseded by statute*, Federal Water Pollution Control Act Amendments of 1972, Pub. L. No. 92-500, § 502(7), 86 Stat. 816, 886 (codified as amended at 33 U.S.C. § 1362(7) (2006 & Supp. V 2011)), *as recognized in* Rapanos v. United States, 547 U.S. 715 (2006). In 1870, in *The Daniel Ball*, the Supreme Court held that to satisfy the locality test, the waterway must be "navigable in fact." 77 U.S. (10 Wall.) at 563 (defining "navigable in fact" as "used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water"). Four years later, in the 1874 case *The Montello*, the Supreme Court acknowledged that to be navigable, the waterway must be capable of being used for commerce. 87 U.S. (20 Wall.) at 431, 434, 440; *see also id.* (noting that waterways were navigable even if the waterways were only navigable due to locks, damns, or other artificial constructions).

The judicial locality test stood as the test for admiralty jurisdiction for more than a century until Congress passed the Extension of Admiralty Jurisdiction Act in 1948 (the "1948 Act").[54] Congress passed the 1948 Act to resolve an inequity that had developed in admiralty jurisdiction over the previous century.[55] In 1865, in *The Plymouth*, the Supreme Court held that claims concerning a fire that started on a vessel on navigable water and spread to facilities on land could not establish admiralty jurisdiction.[56] The Court opined that the whole injury caused by the tortious act had to occur on navigable water or "at least, the substance and consummation" had to be on navigable water to establish admiralty jurisdiction.[57] *The Plymouth*'s substance and consummation rule often led to inequitable results.[58] Under this rule, courts granted jurisdiction if the breach and injury occurred on navigable water.[59] At the same time, courts

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[54] *See* Pub. L. No. 80-695, 62 Stat. 496, 496 (1948) (codified as amended at 46 U.S.C. § 30101 (2006)); *Grubart*, 513 U.S. at 531–32 (explaining that the Extension of Admiralty Jurisdiction Act expanded the traditional locality test to include torts involving a vessel that caused injury on land).

[55] David W. Robertson & Michael F. Sturley, *The Admiralty Extension Act Solution*, 34 J. MAR. L. & COM. 209, 245–46 (2003). *See generally infra* notes 56–60 and accompanying text (discussing this inequity).

[56] *See* 70 U.S. (3 Wall.) 20, 21, 36–37 (1865), *superseded by statute*, 62 Stat. at 496 (codified as amended at 46 U.S.C. § 30101), *as recognized in Grubart*, 513 U.S. 527.

[57] *See id.* at 35–36. In *The Plymouth*, the Court reasoned that "[t]he locality is the entire field" and includes all the individual aspects of the tort, such as where the tortious act occurred and where the victim was injured. *Id*. at 28, 36. Posing a metaphor, the Court asked:

> Where is the locality of the sunbeam? In the mighty orb from which it parts? or in the boundless track through which it passes? or on the earth which it animates with life, and health, and warmth? In no one, assuredly, alone. All are but parts of one stupendous whole . . . .

Id. at 28.

[58] *See* Robertson & Sturley, *supra* note 55, at 245–46 (explaining that under *The Plymouth*, if a bridge and vessel collided due to the fault of the bridge, the vessel owner could sue the bridge in admiralty—but if the vessel were at fault, the bridge owner could not sue the vessel in admiralty); Adams, *supra* note 48, at 165 (discussing how under *The Plymouth*, victims who were injured on navigable water by torts occurring on land could bring suit under admiralty law—but land victims could not do the same for torts commissioned on navigable water); *see also* The Admiral Peoples, 295 U.S. 649, 652–53 (1935) (explaining that it should not matter for establishing admiralty jurisdiction in a slip and fall case on a vessel's gangplank whether the victim lands in the water or on land); Staring, *supra* note 23, at 480 (noting that under *The Plymouth*'s locality test, a court may grant admiralty jurisdiction if a seaman falls off a vessel in navigable water onto a dock, but may have to deny admiralty jurisdiction if the seaman falls off a vessel onto land).

[59] *See The Plymouth*, 70 U.S. (3 Wall.) at 35–36; Adams, *supra* note 48, at 165; *see also The Admiral Peoples*, 295 U.S. at 652–53 (discussing lower federal courts' observations of the inequitable results produced by *The Plymouth*).

denied jurisdiction when the breach of duty occurred on navigable water but the injury occurred on land.[60]

The 1948 Act solved this inequity by granting admiralty jurisdiction if the tort occurred on navigable water, *or* if a vessel on navigable water caused an injury on land.[61] Congress passed the 1948 Act to expand admiralty jurisdiction.[62] The 1948 Act modified, but did not overrule, the Supreme Court's locality rule.[63] To satisfy the locality test after 1948, the tort had to *either* occur on navigable water *or*, if the injury occurred on land, the injury had to have been caused by a vessel in navigable water.[64] In passing the 1948 Act, Congress intended to extend admiralty jurisdiction to victims who were injured while on land by vessels on navigable water.[65]

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[60] *See The Plymouth*, 70 U.S. (3 Wall.) at 35–36; Adams, *supra* note 48, at 165; *see also The Admiral Peoples*, 295 U.S. at 652–53 (discussing lower federal courts' observations of the inequitable results produced by *The Plymouth*).

[61] *See* Extension of Admiralty Jurisdiction Act, Pub. L. No. 80-695, 62 Stat. 496, 496 (1948) (codified as amended at 46 U.S.C. § 30101 (2006)). When passed, the 1948 Act stated, "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." *Id.* Although the Act is still in effect, Congress slightly changed its language in 2006. Act of Oct. 6, 2006, Pub. L. No. 109-304, sec. 6(c), § 30101, 120 Stat. 1485, 1509 (codified as amended at 46 U.S.C. § 30101). In relevant part, the Act now states, "The admiralty and maritime jurisdiction of the United States extends to and includes cases of injury or damage, to person or property, caused by a vessel on navigable waters, even though the injury or damage is done or consummated on land." *Id.* § 30101(a).

[62] *See* Gebhard v. S.S. Hawaiian Legislator, 425 F.2d 1303, 1309 (9th Cir. 1970); Robertson & Sturley, *supra* note 55, at 245–47, 249; Staring, *supra* note 23, at 480; *see also Grubart*, 513 U.S. at 532 (explaining that the purpose of the Act was to eliminate the inequitable line between land and water when a vessel causes injury on land); Exec. Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249, 260 (1972) (noting that the Act was specifically passed to bring scenarios where vessels cause damage on land into admiralty law's protection). Scholars debate whether the 1948 Act should be read as adding to the Supreme Court's locality test analysis or whether it establishes a wholly separate test for establishing admiralty jurisdiction. *See infra* note 84 (discussing this debate and noting that most courts and scholars believe that the 1948 Act adds to the Supreme Court's locality test analysis and does not establish a separate test for establishing admiralty jurisdiction).

[63] *See Grubart*, 513 U.S. at 531–32 (observing that Congress passed the 1948 Act "to end concern over the sometimes confusing line between land and water, by investing admiralty jurisdiction over 'all cases' where injury was caused by a ship or other vessel on navigable water; even if such injury occurred on land"); Adams, *supra* note 48, at 165 (explaining that the 1948 Act overruled *The Plymouth*'s holding but not *The Plymouth*'s locality test). *See generally supra* note 58 and accompanying text (discussing the inequities that resulted under a strict application of *The Plymouth*'s locality test).

[64] *See* 46 U.S.C. § 30101; *Grubart*, 513 U.S. at 532, 534; Adams, *supra* note 48, at 169. Furthermore, in 1963, in *Gutierrez v. Waterman Steamship Corp.*, the Supreme Court held that the 1948 Act should be interpreted broadly to include damages and injuries caused by a vessel or by the vessel's personnel. 373 U.S. 206, 209–10 (1963) (reasoning that there was "no distinction in admiralty between torts committed by the ship itself and by the ship's personnel while operating it").

[65] *Exec. Jet*, 409 U.S. at 260; Staring, *supra* note 23, at 480. Examples of vessels on navigable water causing damage on land include vessels colliding with a pier or bridge and fires on vessels

After Congress passed the 1948 Act, the Supreme Court further reshaped the test for admiralty jurisdiction through four landmark decisions.[66] Generally, in these decisions, the Supreme Court addressed the modern uses of navigable waters, especially the use of pleasure vessels and overseas air transportation, both of which presented new perils to maritime commerce.[67] These four cases produced the modern two-part test for admiralty jurisdiction for in personam tort suits,[68] which now includes both a locality element and a connection element.[69]

First, in 1972 in *Executive Jet Aviation v. City of Cleveland*, the Supreme Court held that to establish admiralty jurisdiction for suits involving aviation crashes on navigable waters, the claim must satisfy the locality test, *and* the activities giving rise to the tort must bear a significant relationship to traditional maritime activities.[70] The Court held that an airplane that hit a flock of seabirds and crashed in Lake Erie, a navigable waterway, did not bear a significant relationship to traditional maritime activities and, thus, did not warrant admiralty jurisdiction.[71] Despite this holding, the Court did not establish an explicit test to determine what would qualify as a traditional maritime activity.[72] The opinion emphasized, however, that to be considered a traditional activity, the activity must be of the type that admiralty law was developed to address.[73] The Court noted that a plane predominantly flying over land that crashed and sank in navigable water did not bear a significant relationship to traditional maritime activi-

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spreading to land. *See, e.g.*, *Sisson*, 497 U.S. at 360 (vessel fire); *The Plymouth*, 70 U.S. (3 Wall.) at 20 (same); Empire Seafoods, Inc. v. Anderson, 398 F.2d 204, 207 (5th Cir. 1968) (vessel collision).

[66] *See, e.g.*, *Grubart*, 513 U.S. at 534 (enumerating the current test for admiralty jurisdiction); *Sisson*, 497 U.S. at 360–67; *Foremost*, 457 U.S. at 669, 673, 677; *Exec. Jet*, 409 U.S. at 268; *infra* notes 67–85 and accompanying text (discussing the Supreme Court's four recent landmark admiralty jurisdiction decisions).

[67] *See Grubart*, 513 U.S. at 529 (involving a barge that allegedly weakened and collapsed a pier); *Sisson*, 497 U.S. at 360 (involving claims stemming from a fire that started on a pleasure vessel in a marina, damaging the marina and other pleasure vessels); *Foremost*, 457 U.S. at 668 (analyzing a collision between two pleasure vessels); *Exec. Jet*, 409 U.S. at 254–55 (analyzing admiralty jurisdiction's application to a plane crash in navigable water and noting that *The Plymouth*'s locality test developed before anything other than commercial vessels was involved in maritime torts). Note that "[a] pleasure vessel is any vessel not engaged in maritime commerce." Hechinger v. Caske, 890 F.2d 202, 207 (9th Cir. 1989).

[68] *See infra* notes 69–85 and accompanying text (discussing the admiralty jurisdiction test's evolution over the last half century).

[69] *See Grubart*, 513 U.S. at 534.

[70] 409 U.S. at 268 (reasoning that adding a significant relationship prong to the traditional locality test better honored admiralty jurisdiction's "history and purpose").

[71] *Id.* at 250, 273–74.

[72] *See id.* at 269–71 (analyzing the specific facts of *Executive Jet* without establishing a broad holding beyond the facts at hand).

[73] *See id.*

ties because the plane's activities and crash were not related to the work or sinking of a vessel.[74]

Ten years later, in 1982, in *Foremost Insurance Co. v. Richardson*, the Supreme Court extended the reasoning in *Executive Jet* to all admiralty suits by holding that to establish admiralty jurisdiction, the tort must satisfy the locality test, and the activity that the parties were engaged in at the time of the injury must bear a significant relationship to traditional maritime activities.[75] In *Foremost*, the Supreme Court held that claims surrounding a collision between two pleasure vessels met both the locality and significant relationship tests and therefore satisfied admiralty jurisdiction.[76] The Court clarified that even though admiralty jurisdiction's primary purpose is to protect maritime commerce, admiralty jurisdiction is not limited to vessels participating in maritime commerce.[77] The Court reasoned that such a limitation would not sufficiently protect all maritime commerce because entities not engaged in maritime commerce can still adversely affect participants.[78]

In 1990, in *Sisson v. Ruby*, the Supreme Court added the final prong to the test for admiralty jurisdiction—evaluating whether the tort had the potential to disrupt maritime commerce.[79] The Court held that to establish admiralty jurisdiction, the tort must have occurred on navigable water, the activities giving rise to the tort had to bear a substantial relationship to traditional maritime activities, *and* the tort must have had the potential to disrupt maritime commerce.[80] Taken

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[74] *Id.* at 250, 269–70, 273 (explaining that this case was only "fortuitously and incidentally connected to navigable waters").

[75] 457 U.S. at 673. A literal reading of *Executive Jet* would limit the case's holding to aviation torts. *Id.*; *see Exec. Jet*, 409 U.S. at 268; Adams, *supra* note 48, at 167.

[76] 457 U.S. at 669, 677.

[77] *Id*. at 674–75; *see* Paré, *supra* note 28, at 201–02.

[78] *Foremost*, 457 U.S. at 674–75 (noting that "the failure to recognize the breadth of this federal interest ignores the potential effect of noncommercial maritime activity on maritime commerce").

[79] *See* 497 U.S. at 360–67. The case involved claims surrounding a fire that started on a pleasure vessel in a marina and damaged only the marina and other pleasure vessels. *See id.* at 360. The Court held that the suit could be brought in admiralty jurisdiction. *See id*. at 367.

[80] *See id*. at 360–67. The Court reasoned that the marina was navigable water, maritime fires could disrupt maritime commerce, and storing vessels in a marina bore a significant relationship to maritime activity. *See id.* at 367. Furthermore, in *Sisson*, the Court explicitly rejected a fact-specific test regarding the tort's impact on maritime commerce. *Id.* at 363 (insisting that the tort's general character and not its actual affect should determine whether the tort could impact maritime commerce). Thus, parties do not have to show that maritime commerce *was* disrupted, rather, parties must simply show that it *could* have been disrupted. *Id.* Similarly, the Court in *Sisson* also adopted a broad test for assessing whether the activity involved bears a substantial relationship with traditional maritime activity. *Id.* at 364–65. The Court explained that the activity should be defined by its general character and not by the particular parties' acts. *Id.* The Court also rejected the proposition that only navigation is substantially related to traditional maritime activities. *Id.* at 365–67 (reasoning that such a narrow application would not serve the purpose of admiralty jurisdiction: to protect maritime commerce).

together, the substantial relationship prong and the disruption prong make up the connection element.[81] Thus, after *Sisson*, the test for admiralty jurisdiction was a two-part test with a location and a connection element.[82]

Five years later, in the 1995 case *Grubart v. Great Lakes Dredge & Dock Co.*, the Supreme Court reaffirmed the two-part locality and connection test.[83] Henceforth, to satisfy the location element, the tort must have occurred on navigable water or, if the injury occurred on land, the injury must have been caused by a vessel on navigable water.[84] To satisfy the connection element, the tort must be of the type that would potentially interfere with maritime commerce and the general character of the activity giving rise to the incident must bear a substantial relationship to traditional maritime activity.[85]

II. The Introduction of a Vessel Requirement: The Lower Courts' Departure from the Supreme Court's Test for Admiralty Jurisdiction

Courts and academics alike have struggled to apply the two-part test for admiralty jurisdiction.[86] Recall that the Supreme Court has laid out the current two-part test for admiralty jurisdiction, which includes both a location and a connection element, twice: in 1990 in *Sisson v. Ruby*, and in 1995 in *Grubart v.*

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[81] *Grubart*, 513 U.S. at 534; *see Sisson*, 497 U.S. at 363–65.

[82] *Grubart*, 513 U.S. at 534; *see Sisson*, 497 U.S. at 360, 363–65.

[83] 513 U.S. at 534. In *Grubart*, the Court applied the locality and connection test and affirmed that the federal district court had admiralty jurisdiction over claims by a barge owner for limitation of liability after the barge allegedly weakened a pier while driving piles and caused the pier to collapse and flood Chicago. *Id.* at 529, 548.

[84] *Id.* at 534. Most courts and academics believe that the Supreme Court synthesized the traditional location test and the 1948 Act in *Grubart* to establish a two-part locality element—either the tort must occur on navigable water or, if the tort occurs on land, then the tort must be caused by a vessel—in addition to the connection element. *See* Crotwell v. Hockman-Lewis Ltd., 734 F.2d 767, 768 (11th Cir. 1984) (noting that to satisfy the 1948 Act, the plaintiff also had to satisfy the Supreme Court's connection element); Sohyde Drilling & Marine Co. v. Coastal States Gas Producing Co., 644 F.2d 1132, 1135 (5th Cir. 1981) (same); Robertson & Sturley, *supra* note 55, at 239–40 (explaining that most courts believe that the locality test under *Grubart* incorporates the 1948 Act, but noting that some courts still maintain that the 1948 Act created a separate basis for admiralty jurisdiction); Ernest A. Young, *Preemption at Sea*, 67 GEO. WASH. L. REV. 273, 280–81 (1999) (noting that the 1948 Act expanded the traditional locality test); Adams, *supra* note 48, at 165 (same); *cf. Grubart*, 513 U.S. at 534 (citing Extension of Admiralty Jurisdiction Act, Pub. L. No. 80-695, 62 Stat. 496, 496 (1948) (codified as amended at 46 U.S.C. § 30101 (2006)). Some scholars, however, still claim that the Act provides an independent basis for admiralty jurisdiction. *See* Robertson & Sturley, *supra* note 55, at 239–41. Advocates for a separate basis argue that if a tortious injury on land was caused by a vessel on navigable water, then admiralty jurisdiction is satisfied under the 1948 Act, and the court does not have to conduct the *Sisson*-*Grubart* connection test. *Id.*

[85] *Grubart*, 513 U.S. at 534.

[86] *See infra* notes 87–116 and accompanying text (discussing how some lower courts have inappropriately started requiring the tort to involve a vessel to establish admiralty jurisdiction).

Great Lakes Dredge & Dock Co.[87] Despite synthesizing the modern test for admiralty jurisdiction, the *Grubart* Court provided little guidance to lower courts on how to apply the test, especially regarding what level of generality to use when describing the activity and the tort.[88] In the wake of *Sisson* and *Grubart*, some lower courts have attempted to simplify and narrow the test for admiralty jurisdiction.[89]

Specifically, in response to the struggle to apply the *Sisson-Grubart* test, these lower courts have begun to limit admiralty jurisdiction to claims involving vessels.[90] For example, some lower courts have tried to simplify the *Sisson-Grubart* test by combining the two aspects of the location element into one question: did the tort involve a vessel on navigable water?[91] And at least one lower court has tried to simplify the connection element by reasoning that only torts involving vessels could disrupt maritime commerce or that only activities con-

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[87] *See* Grubart v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 534 (1995); Sisson v. Ruby, 497 U.S. 358, 360–67 (1990). *See generally supra* notes 9–12 and accompanying text (outlining the current test for establishing admiralty jurisdiction for in personam tort suits).

[88] *See* 513 U.S. at 534, 538–39 (providing no explicit direction beyond instructing courts to classify the tort and activity at a level of generality); Robertson & Sturley, *supra* note 55, at 221–23 (discussing the problems in applying the connection element of the two-part test because a court cannot be certain what level of generality to use to describe the activity and tort); Adams, *supra* note 48, at 171–72 (observing that "the Court [in *Grubart*] did not adequately define the potential disruption and substantial relationship elements of the jurisdictional formula," and that "[t]hese elements are too vague to be consistently applied by the lower courts"). In *Grubart*, Justice Clarence Thomas argued in a concurring opinion that: "The fact that we have had to revisit this question [the test for admiralty jurisdiction] for the third time in a little over 10 years indicates the defects of the Court's current approach." 513 U.S. at 549 (Thomas, J., concurring). In accord with Justice Thomas's fears, scholars have described courts' uncertainty surrounding the correct level of generality to apply to the connection element of the test as the "Goldilocks requirement." *See* Robertson and Sturley, *supra* note 55, at 222 (lamenting that the courts will be searching for a characterization that is "just right").

[89] *See, e.g.*, Bd. of Comm'rs v. M/V Belle of Orleans, 535 F.3d 1299, 1305–06, 1313 (11th Cir. 2008) (reading a vessel requirement into the test for admiralty jurisdiction), *abrogated by* Lozman v. City of Riviera Beach Fla., 133 S. Ct. 735 (2013); De La Rosa v. St. Charles Gaming Co., 474 F.3d 185, 187–88 (5th Cir. 2006) (same); Duplantis v. Northrop Grumman, No. 10-1575, 2012 WL 2369348, at *3 (W.D. La. June 20, 2012) (same); Miles v. VT Halter Marine, Inc., 792 F. Supp. 2d 919, 924 (E.D. La. 2011) (same); *infra* notes 90–116 and accompanying text (discussing these cases).

[90] *See Belle of Orleans*, 535 F.3d at 1305–06, 1313; *De La Rosa*, 474 F.3d at 187–88; *Duplantis*, 2012 WL 2369348, at *3; *Miles*, 792 F. Supp. 2d at 924. *See generally* Robertson, *supra* note 23, 145–47 (analyzing the U.S. Court of Appeals for the Fifth Circuit's 2006 decision in *De La Rosa v. St. Charles Gaming Co.* and concluding that the court should not have read a vessel requirement into the location test); Robertson & Sturley, *supra* note 14, at 489 (explaining that a vessel is not required for admiralty jurisdiction).

[91] *See, e.g.*, *Belle of Orleans*, 535 F.3d at 1305–06, 1313; *De La Rosa*, 474 F.3d at 186–88; *Miles* 792 F. Supp. 2d at 920–21, 924. *See generally Grubart*, 513 U.S. at 534 (explaining that the location element involves two aspects: either the tort—cause and injury—must occur on navigable water, or, if the injury occurred on land, then a vessel on navigable water must have caused the injury); *Sisson*, 497 U.S. at 360–61 (same).

cerning vessels could bear a substantial relationship to traditional maritime activity.[92]

The lower courts seem to ground their vessel requirement on the concurrences in *Sisson* and *Grubart*.[93] The *Sisson* and *Grubart* concurrences opined that a multipart test was too complicated.[94] Instead, the concurrences advocated for an admiralty jurisdiction test based on whether a vessel on navigable water caused the tort.[95] In *Sisson*, the concurrence noted that all torts involving vessels on navigable water should warrant admiralty jurisdiction.[96] The *Sisson* concurrence, however, did not foreclose the possibility of granting admiralty jurisdiction to torts not involving vessels.[97] Rather, the *Sisson* concurrence argued that the substantial relationship test, which requires that the activities giving rise to the tort bear a substantial relationship to traditional maritime activities, should only be used for non-vessel-related torts.[98]

Nevertheless, some lower courts have begun to break from a strict application of the *Sisson-Grubart* test by altering the location element to evaluate whether the tort occurred *on a vessel* in navigable water rather than exclusively analyzing whether the tort occurred on navigable water.[99] For example, in 2006, in *De La Rosa v. St. Charles Gaming Co.*, the U.S. Court of Appeals for the Fifth Circuit held that the fact that a tort occurred on navigable water was insufficient to establish admiralty jurisdiction.[100] Rather, the court required that the tort spe-

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[92] *See Duplantis*, 2012 WL 2369348, at *2–3; *infra* notes 112–116 and accompanying text (discussing the U.S. District Court for the Western District of Louisiana's 2012 decision in *Duplantis v. Northrop Grumman*). *See generally Grubart*, 513 U.S. at 534 (describing the connection element).

[93] *Compare infra* notes 94–98 and accompanying text (outlining the concurrences in *Sisson* and *Grubart*), *with infra* notes 99–111 and accompanying text (discussing the lower court decisions). Although these courts do not explicitly cite the *Sisson* and *Grubart* concurrences, the courts' holdings follow their reasoning. *Compare infra* notes 94–98 and accompanying text, *with infra* notes 99–111 and accompanying text.

[94] *See Grubart*, 513 U.S. at 552–53, 555 (Thomas, J., concurring) (opining that the connection test is unnecessary for vessels and, thus, to establish admiralty jurisdiction in cases involving vessels, a court should only have to conduct the locality test); *Sisson*, 497 U.S. at 374 (Scalia, J., concurring) (arguing that to establish admiralty jurisdiction, a court should simply inquire whether the tort occurred on a vessel on navigable water); *id.* at 375 (quoting Hanover Star Milling Co. v. Metcalf, 240 U.S. 403, 426 (1916) (Holmes, J., concurring)).

[95] *See Grubart*, 513 U.S. at 552, 555 (Thomas, J., concurring); *Sisson*, 497 U.S. at 374 (Scalia, J., concurring).

[96] *See* 497 U.S. at 368, 374 (Scalia, J., concurring).

[97] *See id.*

[98] *Id.* at 368 (reasoning that although the Supreme Court applied the substantial relationship test in the 1982 case *Foremost Ins. Co. v. Richardson*, which involved a collision between two pleasure vessels, the Court was only demonstrating why all torts involving vessels on navigable water satisfy the significant relationship test).

[99] *See Belle of Orleans*, 535 F.3d at 1305–06, 1313; *De La Rosa*, 474 F.3d at 186–88; *Miles* 792 F. Supp. 2d at 920–21, 924; *infra* notes 100–111 and accompanying text (discussing these lower court decisions).

[100] *See* 474 F.3d at 186–88.

cifically occur on a vessel to grant admiralty jurisdiction.[101] In *De La Rosa*, a patron who fell and was injured on a permanently moored floating casino could not establish admiralty jurisdiction because the casino was not a vessel.[102] Denying admiralty jurisdiction in this case did not comport with the *Sisson-Grubart* test.[103]

Similarly, in 2011, in *Miles v. VT Halter Marine, Inc.*, the U.S. District Court for the Eastern District of Louisiana denied admiralty jurisdiction to an injured barge worker's estate despite the tort occurring on navigable water because the tort did not involve a vessel.[104] The court acknowledged the plaintiffs' contention that they only needed to show that the tort occurred on navigable water to satisfy the location element.[105] Yet, without refuting the plaintiffs' argument, the court only analyzed whether the barge was a vessel and held that the uncompleted barge was not a vessel.[106]

At least one court has crafted yet another approach: first analyzing whether the tort involved a vessel, and then, only if the tort involved a vessel, proceeding to apply the locality test to confirm that the tort occurred on navigable water.[107] In 2008, in *Board of Commissioners v. M/V Belle of Orleans*, the U.S. Court of Appeals for the Eleventh Circuit held that the court had admiralty jurisdiction over the plaintiff's in personam tort claims because the tort was caused by a vessel on navigable water.[108] The *Belle of Orleans* court did not completely disregard the Supreme Court's test for admiralty jurisdiction because it did not deny admiralty jurisdiction.[109] But, by analyzing whether the tort occurred on navigable water *and* whether the tort occurred on a vessel, the *Belle of Orleans* court

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[101] *See id.*

[102] *See id.* The floating casino was permanently moored in the navigable waters of Lake Charles, Louisiana. *Id.* at 186. Both the casino's alleged negligent act of failing to secure the carpeting and the victim's injury occurred on the floating casino. *Id.*

[103] Robertson, *supra* note 23, at 145–47 (noting that *De La Rosa*'s holding does not appear to comport with the Supreme Court's test for admiralty jurisdiction and that suits similar to *De La Rosa* have traditionally established admiralty jurisdiction despite not involving a vessel). *Compare Grubart*, 513 U.S. at 534 (indicating that the location requirement for admiralty jurisdiction is satisfied when *either* an injury occurring on land was caused by a vessel on navigable water *or* a tort—cause and injury—occurred on navigable water), *and Sisson*, 497 U.S. at 360–61 (same), *with De La Rosa*, 474 F.3d at 186–88 (rejecting admiralty jurisdiction based on the fact that a tort occurring on navigable water did not involve a vessel).

[104] *See* 792 F. Supp. 2d at 920–21, 924.

[105] *Id.* at 921.

[106] *Id.* at 921, 924.

[107] *See Belle of Orleans*, 535 F.3d at 1305–06, 1313.

[108] *Id.* at 1305, 1313. The plaintiff sued in personam against the casino boat owner and in rem against the casino boat itself. *Id.* at 1305. The court reasoned that both the in rem and in personam suits required a vessel to establish admiralty jurisdiction. *Id.* In addition to finding that the locality element was satisfied, the court also found that the connection element was satisfied. *See id.* at 1313.

[109] *See id.*

undermined the *Sisson-Grubart* test.[110] The court undermined the *Sisson-Grubart* test because *Sisson* and *Grubart* established that the primary test should be whether the tort occurred on navigable water and that courts should only inquire as to whether the injury was caused by a vessel on navigable water if the injury occurred on land.[111]

Finally, at least one lower court has further distorted the *Sisson-Grubart* test for admiralty jurisdiction by holding that the connection element cannot be satisfied if the watercraft upon which the tort occurred does not qualify as a vessel.[112] In 2012, in *Duplantis v. Northrop Grumman*, the U.S. District Court for the Western District of Louisiana held that an injured vessel repairman could not establish admiralty jurisdiction because the watercraft on which the plaintiff was working was under construction and therefore was not a vessel.[113] The court was faithful to the *Sisson-Grubart* test in terms of the location element by finding that it was satisfied due to the tort having occurred on navigable waters.[114] Nevertheless, the court denied admiralty jurisdiction.[115] The court reasoned that because the watercraft was not a vessel, the plaintiff could not establish a connection to traditional maritime activities.[116]

III. Saving Maritime Commerce: A Test for Admiralty Jurisdiction That Requires the Involvement of a Vessel Does Not Protect Maritime Commerce

This Part argues that a vessel requirement not only violates the Supreme Court and Congress's intent behind the current two-part test for admiralty jurisdiction, but it also inadequately protects maritime commerce.[117] Neither the lo-

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[110] *Compare Grubart*, 513 U.S. at 534 (indicating that the location requirement for admiralty jurisdiction is satisfied when *either* an injury occurring on land was caused by a vessel on navigable water *or* a tort—cause and injury—occurred on navigable water), *and Sisson*, 497 U.S. at 360–61 (same), *with Belle of Orleans*, 535 F.3d at 1305–06, 1313 (requiring first that a vessel was involved in the tort and only then proceeding to conduct the remainder of the location test).

[111] *See supra* note 110.

[112] *Compare Grubart*, 513 U.S. at 534 (holding that to satisfy the connection element, the tort must be of the type that would potentially interfere with maritime commerce and that the general character of the activity giving rise to the incident must bear a substantial relationship with traditional maritime activity), *and Sisson*, 497 U.S. at 361–67 (same), *with Duplantis*, 2012 WL 2369348, at *2–3 (reading a vessel requirement into the general *Sisson-Grubart* connection element). Notably, the *Grubart* and *Sisson* courts did not narrow the connection element by suggesting that a vessel would be required. *See Grubart*, 513 U.S. at 534; *Sisson*, 497 U.S. at 361–67. Quite the opposite, the *Sisson* Court tellingly adopted a broad test for assessing whether the activity involved bears a substantial relationship with traditional maritime activity. *See* 497 U.S. at 364–65.

[113] 2012 WL 2369348, at *3.

[114] *See id.* at *2.

[115] *See id*. at *3.

[116] *See id.* at *2–3.

[117] *See infra* notes 118–172 and accompanying text.

cality element nor the connection element of the Supreme Court and Congress's two-part admiralty jurisdiction test has ever required a vessel's involvement to establish admiralty jurisdiction.[118] The location element does not require a vessel to be involved unless the injury occurred on land.[119] Additionally, the Supreme Court has never held that the tort or the activity giving rise to the tort must involve a vessel to satisfy the connection element.[120] The Supreme Court and Congress's decision not to impose a vessel requirement comports with admiralty law's mission to protect maritime commerce, recognizing that torts not involving vessels can also affect maritime commerce.[121]

Section A of this Part explains that a vessel test thwarts Congress's intent regarding admiralty jurisdiction by violating the spirit of the 1948 Act.[122] Section B then notes that a vessel-based test improperly forces judges to decide an issue of fact at the outset of litigation.[123] Section C explains that some maritime commerce participants do not interact with vessels and thus are inadequately protected under a vessel requirement.[124] Next, Section D examines certain operations on navigable waters that may not involve vessels or involve maritime commerce but still require admiralty law's protection.[125] Finally, Section E discusses possible courses of action for Congress or the Supreme Court to ensure that lower courts do not continue to impose a vessel requirement for establishing admiralty jurisdiction.[126]

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[118] *See* Robertson, *supra* note 23, at 145–47; Robertson & Sturley, *supra* note 14, at 489; *see also* 46 U.S.C. § 30101 (2006) (failing to impose a vessel requirement for admiralty jurisdiction unless an injury occurs on land); Grubart v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 534 (1995) (same); Sisson v. Ruby, 497 U.S. 358, 360–67 (1990) (same); Exec. Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249, 268 (1972) (same).

[119] *See* 46 U.S.C. § 30101; *Grubart*, 513 U.S. at 534; Adams, *supra* note 48, at 169.

[120] *See Grubart*, 513 U.S. at 534; *Sisson*, 497 U.S. at 360–67; Foremost Ins. Co. v. Richardson, 457 U.S. 668, 673, 677 (1982); *Exec. Jet*, 409 U.S. at 268.

[121] *Compare* Robertson & Sturley, *supra* note 14, at 489 (illustrating that the modern admiralty jurisdiction test does not require a vessel), Robertson, *supra* note 23, at 145–47 (same), *Grubart*, 513 U.S. at 534 (stating the modern admiralty jurisdiction test), *and Sisson*, 497 U.S. at 360–67 (same), *with Foremost*, 457 U.S. at 674–77 (explaining that admiralty law's "primary focus" is to protect maritime commerce and noting that maritime commerce can be disrupted by maritime commercial activities that do not involve a vessel).

[122] *See infra* notes 127–133 and accompanying text.

[123] *See infra* notes 134–141 and accompanying text.

[124] *See infra* notes 142–152 and accompanying text.

[125] *See infra* notes 153–165 and accompanying text.

[126] *See infra* notes 166–172 and accompanying text.

A. Preserving Congress's Intent: A Vessel Requirement Violates the Spirit of the 1948 Act

An admiralty jurisdiction test that requires that the tort involve a vessel violates the spirit of the 1948 Act.[127] Prior to the 1948 Act, parties only had to show that the tort occurred on navigable water to establish admiralty jurisdiction.[128] After the 1948 Act, the parties were given two options: establish that the tort—meaning the tortious act and the injury—occurred on navigable water, *or*—if the injury occurred on land—show that a vessel on navigable water caused the injury.[129] If Congress wanted to restrict admiralty jurisdiction to torts involving vessels, Congress could have passed legislation requiring all claims in admiralty to involve a vessel.[130] Congress, however, specifically did not limit admiralty jurisdiction to suits involving vessels.[131] Even after the 1948 Act, the default test remained whether the tort occurred on navigable water, and lower courts only had

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[127] *Compare* Cleveland Terminal & Valley R.R., 208 U.S. 316, 320 (1908) (describing the Supreme Court's traditional locality test as noted in the 1865 case *The Plymouth*, which required that a tort occurred on navigable waters—notably without mention of a vessel requirement), *and* The Admiral Peoples, 295 U.S. 649, 652–53 (1935) (discussing how a literal application of *The Plymout*'s locality test often produced inequitable results by failing to recognize admiralty jurisdiction where it was logically due), *with Grubart*, 513 U.S. at 531–32 (indicating that the 1948 Act was designed to expand *The Plymouth*'s locality requirement to admiralty jurisdiction, not to abolish, replace, or narrow it), *and Executive Jet*, 409 U.S. at 260 (same). Evidence of Congress's intent to leave admiralty jurisdiction open to non-vessel torts also appears in the Suits in Admiralty Act ("SAA"), which waives the United States' sovereign immunity for admiralty suits. *See* Ayers v. United States, 277 F.3d 821, 827 (6th Cir. 2002) (explaining that SAA suits do not require a vessel's involvement); *cf.* 46 U.S.C. § 30903(a) (2006) (declining to require vessel involvement). *See generally* Dominguez v. United States, No. 03 CV.2206(TPG), 2004 WL 691251, at *1–2 (S.D.N.Y. Mar. 31, 2004) (noting that the United States can only be sued if Congress has waived sovereign immunity but that Congress waived sovereign immunity for admiralty claims through the SAA). The SAA waives immunity "[i]n a case in which, if a vessel were privately owned or operated, *or* if cargo were privately owned or possessed, *or* if a private person or property were involved, a civil action in admiralty could be maintained." 46 U.S.C. § 30903 (emphasis added). The SAA requires a court to have admiralty jurisdiction for a plaintiff to bring an SAA suit, but the SAA also explicitly provides relief for suits not involving vessels. *Ayers*, 277 F.3d at 827; *see* 46 U.S.C. § 30903. If Congress had envisioned a vessel requirement, then it would have envisioned nullifying most of the SAA. *See* 46 U.S.C. § 30903; *Ayers*, 277 F.3d at 827 (denying the appellant's claim that the SAA requires a vessel and noting that the statute's plain language does not require a vessel if admiralty jurisdiction can be established).

[128] *See Grubart*, 513 U.S. at 531–32, 534; *The Plymouth*, 70 U.S. (3 Wall.) 20, 35–37 (1865), *superseded by statute*, Extension of Admiralty Jurisdiction Act, Pub. L. No. 80-695, 62 Stat. 496, 496 (1948) (codified as amended at 46 U.S.C. § 30101 (2006)).

[129] *Grubart*, 513 U.S. at 531–32, 534 (providing for this two-part locality test); *see* 62 Stat. at 496.

[130] *Cf.* 46 U.S.C. § 30101 (providing an example of Congress passing a statute to redefine admiralty jurisdiction); Gebhard v. S.S. Hawaiian Legislator, 425 F.2d 1303, 1309 (1970) (discussing the 1948 Act and noting that Congress did not intend to legislate in areas it did not explicitly address in the statute).

[131] *See* 46 U.S.C. § 30101.

to inquire as to whether a vessel caused the injury if it occurred on land.[132] In conflict with the 1948 Act's purpose of expanding admiralty jurisdiction, a test that requires a tort to involve a vessel on navigable water in every instance narrows admiralty jurisdiction.[133]

B. Vessel Determinations Are Issues of Fact Best Preserved for Trial

Beyond upsetting the Supreme Court and Congress's system for establishing admiralty jurisdiction, a vessel requirement forces a judge, at the outset of litigation to resolve a question of fact usually reserved for the fact finder—whether the object involved in the tort was a vessel.[134] Deciding whether a watercraft is a vessel is a fact-intensive inquiry that should be left to the fact finder after each party has had the opportunity to present its full case.[135] Fact-intensive inquiries are often complicated and extensive and should not be included in a

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[132] *See Grubart*, 513 U.S. at 534; De La Rosa v. St. Charles Gaming Co., 474 F.3d 185, 187 (5th Cir. 2006); Robertson, *supra* note 23, at 145–47; Robertson & Sturley, *supra* note 14, at 489.

[133] *Compare Grubart*, 513 U.S. at 531–32 (indicating that the 1948 Act was designed to expand *The Plymouth*'s locality requirement for admiralty jurisdiction to include vessels on navigable water that cause injury on land, and suggesting that the 1948 Act did not abolish, replace, or narrow the locality test under *The Plymouth*, which granted admiralty jurisdiction to all tortious acts occurring on navigable water), *and Executive Jet*, 409 U.S. at 260 (same), *with De La Rosa*, 474 F.3d at 186–88 (denying admiralty jurisdiction despite the tort occurring wholly on navigable water because its location—a floating casino—was not a vessel).

[134] *See* Pederson v. Powell-Duffryn Terminals, Inc., 34 F. Supp. 2d 915, 920 (D.N.J. 1999) (noting that juries should decide whether or not a vessel was in navigation); Hartley v. City of New York, 621 N.Y.S.2d 789, 795 (Sup. Ct. 1994) (explaining that whether a barge was a vessel is a question of fact). Many claims in substantive maritime law require a vessel's involvement in the tort, such as claims of unseaworthiness and claims under the Jones Act or the Longshoreman and Harbor Workers' Compensation Act. *See* Longshoreman and Harbor Workers' Compensation Act, 33 U.S.C. § 905(b) (2006) (compensating injured maritime workers and allowing workers to bring suits against *vessels* and *vessel* owners for negligence); 46 U.S.C. § 10908 (2006) (providing victims with a claim for unseaworthiness if a *vessel* is not fit for its intended use); Jones Act, 46 U.S.C. § 30104 (2006 & Supp. V 2011) (providing a cause of action for injured seaman against the seaman's employer, but requiring that the individual's work further a *vessel's* purpose to qualify as a seaman). Yet, even for these claims, courts have traditionally held that parties do not have to prove vessel status at the outset of litigation because vessel status is a question of fact. *See Pederson*, 34 F. Supp. 2d at 919–20 (holding that it was for the jury to decide whether an injured diver was diving from a vessel and, therefore, could qualify as a seaman); *Hartley*, 621 N.Y.S.2d at 793–95 (noting that the court had admiralty jurisdiction under the locality and connection test but leaving it to the jury to decide whether a vessel was involved for purposes of the plaintiff's Longshoreman and Harbor Workers' Compensation Act claims).

[135] *See Pederson*, 34 F. Supp. 2d at 920; *Hartley*, 621 N.Y.S.2d at 795; *see also* Lozman v. City of Riviera Beach, 133 S. Ct. 735, 739, 741, 744 (2013) (providing a fact-based test to determine whether a watercraft qualifies as a vessel); *supra* note 134 and accompanying text (explaining that vessel status is an issue of fact for the jury and discussing how, for this very reason, courts typically do not require vessel status to be proven at the outset, even for claims that require a vessel).

jurisdictional analysis because they should be quick and simple so litigation may get underway.[136]

The fact-specific and intensive nature of the vessel inquiry became even more pronounced in the 2013 case *Lozman v. City of Riveria Beach*, where the Supreme Court adopted a "reasonable observer test" for classifying watercrafts as vessels.[137] Under *Lozman*'s reasonable observer test, an object is a vessel if a reasonable observer, after analyzing the object's physical characteristics and activities, decides that the object can practically transport people or things on water.[138] A reasonable observer should consider a multitude of facts when deciding whether the object constitutes a practical means of transportation.[139] Specifically, a reasonable observer should note whether the object was capable of self-propulsion, steering, and storing electricity; whether the object's rooms looked like maritime berths; and whether the object was in fact being used for transportation.[140] Given the ambiguous and numerous criteria a court must consider under *Lozman*'s test, a judge cannot be expected to weigh all of these elements at the start of every litigation—before sufficient facts have been presented—to determine admiralty jurisdiction.[141]

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[136] *See* Hertz Corp. v. Friend, 599 U.S. 77, 94 (2010) (discussing the need for simplicity in jurisdictional analyses); *Sisson*, 497 U.S. at 378 (Scalia, J., concurring) (warning about the risks of a cumbersome jurisdictional test (quoting Hanover Star Milling Co., v. Metcalf, 240 U.S. 403, 426 (1916) (Holmes, J., concurring))); *id.* (remarking that uncertain jurisdictional tests have the potential for wasting judicial resources: "judges [may] be misled into trying lengthy cases and laboriously reaching decisions which do not bind anybody").

[137] *See* 133 S. Ct. at 739, 741. Congress has defined a vessel as "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." 1 U.S.C. § 3 (2012). Prior to *Lozman*, a watercraft only had to be used, or capable of being used, as water transportation to qualify as a vessel. Stewart v. Dutra Constr. Co., 543 U.S. 481, 495, 497 (2005). The Supreme Court granted certiorari in *Lozman* to resolve the circuit split regarding whether an owner's intent should be considered when deciding whether a watercraft was used, or capable of being used, as water transportation. *Compare* City of Riviera Beach v. That Certain Unnamed Gray, Two Story Vessel Approximately Fifty-Seven Feet in Length, 649 F.3d 1259, 1267 (11th Cir. 2011) (rejecting a subjective inquiry into the owner's intent regarding the watercraft when determining whether the watercraft was a vessel), *rev'd sub nom*. *Lozman*, 133 S. Ct. 735, *and* Bd. of Comm'rs v. M/V Belle of Orleans, 535 F.3d 1299, 1311 (11th Cir. 2008) (disregarding the watercraft owner's intent when deciding whether a watercraft was a vessel), *abrogated by Lozman*, 133 S. Ct. 735, *with De La Rosa*, 474 F.3d at 187 (considering a moored casino owner's intent to never sail the watercraft again to hold that the casino was not a vessel), Tagliere v. Harrah's Ill. Corp., 445 F.3d 1012, 1014, 1016 (7th Cir. 2006) (noting that a watercraft is not a vessel if it is permanently moored and the owner never intends to sail the craft), *and* La. Int'l Marine, L.L.C. v. Drilling Rig Atlas Century, C.A. No. C–11–186, 2012 WL 4718558, at *5 (S.D. Tex. Aug. 21, 2012) (allowing for a subjective inquiry into the owner's intent when determining a rig's vessel status).

[138] *See* 133 S. Ct. at 739, 746 (applying the reasonable observer test to a floating home to hold that the watercraft was not a vessel).

[139] *See id.* at 739, 741, 746.

[140] *See id.*

[141] *See id.*; *supra* notes 40, 134–136 and accompanying text (discussing the need for simple and quick jurisdictional tests).

C. Forms of Maritime Commerce That Do Not Involve Vessels Still Require Special Protection Under Admiralty Law

Additionally, a test for admiralty jurisdiction that requires a tort to involve a vessel would exclude types of maritime commerce that do not involve vessels.[142] These types of maritime commerce still need special protection under admiralty law, so in this respect, a vessel requirement test would not further admiralty jurisdiction's purpose of protecting maritime commerce.[143] A jurisdictional test that requires the existence of a vessel would be particularly problematic for professional SCUBA divers, such as underwater construction workers.[144] Because professional divers do not always use vessels, a vessel requirement would deny them the protections admiralty jurisdiction provides.[145]

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[142] *See infra* notes 143–152 (discussing types of maritime commerce that do not involve vessels).

[143] *See* McDermott Int'l, Inc. v. Wilander, 498 U.S. 337, 354 (1991) (recognizing that seamen require special protection because of "the special hazards and disadvantages" they encounter); *Foremost*, 457 U.S. at 674 (explaining that admiralty jurisdiction's purpose is to protect maritime commerce); *infra* notes 144–152 and accompanying text (discussing various maritime commerce participants that do not use vessels and arguing that denying admiralty jurisdiction to these participants harms maritime commerce).

[144] *See* Coleman, *supra* note 13, at 537 n.126. *See generally infra* note 145 (illustrating how underwater construction divers will otherwise typically satisfy admiralty jurisdiction). Additionally, some professional SCUBA divers participate in marine tourism—another form of maritime commerce—by teaching SCUBA lessons or conducting SCUBA tours. *See* Coleman, *supra* note 13, at 520, 533–37.

[145] *See* Coleman, *supra* note 13, at 537 n.126 (stating that some divers enter the water from the shore). Conversely, most professional SCUBA divers can satisfy the *Sisson-Grubart* test for admiralty jurisdiction. *See Pederson*, 34 F. Supp. 2d at 916–30; *Hartley*, 621 N.Y.S.2d at 791, 793–95. For example, the most common diver injuries involve underwater injury, so the location element should be readily satisfied under the *Sisson-Grubart* test. *See* Coleman, *supra* note 13, 538–41, 544 (discussing various underwater injuries divers may contract and noting that "[p]laintiffs in diving cases rarely have trouble meeting prerequisites for admiralty jurisdiction, particularly given the relaxed standards adopted by the Supreme Court in [*Grubart*]"); *cf. Grubart*, 513 U.S. at 534 (describing the location element); *Sisson*, 497 U.S. at 360–61 (same). Similarly, many professional divers can easily satisfy the first prong of the connection element. *See Hartley*, 621 N.Y.S.2d at 793–94 (holding that injured divers could potentially disrupt maritime commerce); Coleman, *supra* note 13, at 544. Finally, many commercial divers can easily satisfy the second prong of the connection element, which requires the activity leading to the tort to have a significant relationship to traditional maritime activities. *See* Coleman, *supra* note 13, at 544; *see also Pederson*, 34 F. Supp. 2d at 918–19 (holding that a construction diver's work was substantially related to traditionally maritime activities); *Hartley*, 621 N.Y.S.2d at 794 (noting that underwater construction is "certainly" substantially related to traditional maritime activity). For example, in 1994, in *Hartley v. City of New York*, the Supreme Court of Kings County in New York held that admiralty jurisdiction applied under the *Sisson-Grubart* test to a professional diver who was injured while installing a sewage pipe in New York Harbor. *See* 621 N.Y.S.2d at 791–94. The diver may not, however, have been able to establish admiralty jurisdiction if the court had required the tort to involve a vessel because there was an issue of fact as to whether the watercraft that was involved qualified as a vessel. *See id*. at 795 (holding that whether a watercraft was a vessel did not bear on admiralty jurisdiction, but was rather a question of fact to be resolved at trial). Similarly, in 1999, in *Pederson v. Powell Duffryn Terminals, Inc.*, the U.S. District Court for the District of New Jersey applied the *Sisson-Grubart* test and held that a professional diver who was injured while diving

As participators in maritime commerce, professional SCUBA divers need protection under admiralty law.[146] Divers face unique perils in their profession, like the bends—also known as decompression sickness—which is a common diver ailment.[147] Divers may also suffer from nitrogen narcosis, squeeze, pneumothorax, arrhythmias, hypothermia, and other ailments.[148] State laws may not provide adequate remedies to professional divers injured while participating in maritime commerce, so—absent admiralty jurisdiction—divers may not be adequately compensated for their injuries.[149] For example, admiralty law provides remedies for these injuries that state laws do not offer, such as more causes of action, longer statutes of limitations, and different defenses.[150] If professional divers are not protected from the unique perils they face, like the bends, the risks of diving increase.[151] If diving becomes more hazardous, fewer people will be willing to enter the profession, and the costs of hiring professional divers will rise, thus increasing the costs of maritime commerce involving divers.[152]

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from a floating platform had established admiralty jurisdiction. *See* 34 F. Supp. 2d at 916–20 (noting that whether the floating platform was a vessel was not a factor for determining jurisdiction, but rather a question of fact for the fact finder to decide at trial).

[146] *Compare* Paré, *supra* note 28, at 201–02 (observing that admiralty jurisdiction was established to promote and protect maritime commerce), *and* Perry, *supra* note 28, at 823–25 (discussing the importance of maritime commerce to the United States' economy), *with* Coleman, *supra* note 13, at 519 (noting that SCUBA diving is a billion dollar industry). *Compare* McDermott, 498 U.S. at 354 (recognizing that seamen require special protection because of "the special hazards and disadvantages" they encounter), *with* Coleman, *supra* note 13, at 538–42 (discussing the unique health issues that SCUBA divers face).

[147] *See Hartley*, 621 N.Y.S.2d at 792 (discussing a plaintiff contracting the bends); Coleman, *supra* note 13, at 538–39. *See generally* McDermott, 498 U.S. at 354 (recognizing that seamen require special protection because of "the special hazards and disadvantages" they encounter). When divers breathe underwater, nitrogen builds up in their blood. Coleman, *supra* note 13, at 539. The bends occurs when too much nitrogen builds up in the body and causes bubbles to form in the diver's blood. *Id.* The bends can cause itching, vomiting, rashes, fatigue, muscle weakness and pain, paralysis, numbness, convulsions, and death. *Id.*

[148] Coleman, *supra* note 13, at 540–42. Nitrogen narcosis causes symptoms similar to drinking excessive amounts of alcohol. *Id.* at 540 & n.142. Squeeze occurs when external pressures cause pain in internal air spaces (such as in a diver's ears, teeth, and nose). *Id*. at 541. Pneumothorax occurs when divers surface too fast without breathing, causing the air in their lungs to expand and potentially rupturing their lungs. *Id*. An arrhythmia is an irregular heart rhythm; even divers that do not have irregular heart patterns on land can suffer from heart ailments during dives. *Id*. at 542. Hypothermia is a severe drop in body heat; divers are particular susceptible because water depletes the body of heat faster than air. *Id*.

[149] *See supra* notes 33–36 and accompanying text (explaining that certain remedies are only available under admiralty law, meaning that if a court denies admiralty jurisdiction, an injured party may be without a remedy); *see also* Coleman, *supra* note 13, at 556 (noting that general maritime law has evolved to protect divers).

[150] *See supra* notes 33–36 and accompanying text; Coleman, *supra* note 13, at 556 (discussing admiralty law's application to SCUBA divers).

[151] *See Hartley*, 621 N.Y.S.2d at 793–94.

[152] *See id.*

D. Operations on Navigable Waters Outside of Maritime Commerce Can Still Affect Maritime Commerce and Thus Require Protection Under Admiralty Law

A test for admiralty jurisdiction that requires a vessel's involvement also excludes some groups that do not participate in—but still influence—maritime commerce.[153] Admiralty law was created to protect maritime commerce.[154] The Supreme Court has acknowledged that individuals not participating in maritime commerce can still adversely affect maritime commerce and, therefore, should fall within the reach of admiralty law.[155] As such, admiralty law developed to address operations on navigable waters outside of maritime commerce that may still affect maritime commerce.[156]

The *Sisson-Grubart* test protects operations on navigable waters that adversely affect maritime commerce, even if such operations are outside maritime commerce and do not involve a vessel.[157] For example, the test protects maritime rescue operations, including those of the U.S. Coast Guard, which often do not involve maritime commerce or vessels.[158] Because these operations can disrupt

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[153] *See infra* notes 154–164 and accompanying text (discussing these groups and their effects on maritime commerce).

[154] *See Foremost*, 457 U.S. at 674–75, 677; Paré, *supra* note 28, at 201–02; Perry, *supra* note 28, at 823–25.

[155] *Foremost*, 457 U.S. at 674–75 ("The federal interest in protecting maritime commerce cannot be adequately served if admiralty jurisdiction is restricted to those individuals actually engaged in commercial maritime activity."); *see Sisson*, 497 U.S. at 367; Price v. Price, 929 F.2d 131, 133 (4th Cir. 1991) (synthesizing Supreme Court admiralty jurisprudence); Paré, *supra* note 28, at 202.

[156] *See Foremost*, 457 U.S. at 674–75; Paré, *supra* note 28, at 201–02. *See generally infra* notes 157–165 (discussing how admiralty law addresses negligent rescues by the U.S. Coast Guard).

[157] *See Grubart*, 513 U.S. at 534 (imposing a location element and a connection element, neither of which exclusively require direct involvement in maritime commerce or the involvement of a vessel); *Sisson*, 497 U.S. at 360–67 (same); *see also supra* notes 79–85 and accompanying text (discussing the *Sisson-Grubart* test in more detail); *supra* note 118 and accompanying text (providing further support for the proposition that the current test for admiralty jurisdiction does not require a vessel). The U.S. Court of Appeals for the Sixth Circuit has even gone so far as to hold that swimmers could disrupt maritime commerce and accordingly satisfy the *Sisson-Grubart* test for admiralty jurisdiction. *See Ayers*, 277 F.3d at 826–28 (holding that the claims brought by the estate of a drowned swimmer against the United States for negligently operating a lock established admiralty jurisdiction under *Sisson* and *Grubart*).

[158] *See* Kelly v. United States, 531 F.2d 1144, 1147–48 (2d Cir. 1975); *Dominguez*, 2004 WL 69251, at *2; Crowder v. United States, No. 4:00CV048, 2000 WL 33342288, at *6 (S.D. Ga. Oct. 18, 2000). Although each of these cases involved vessels, the courts recognized that admiralty jurisdiction would still be proper if vessels were not present. *See Kelly*, 531 F.2d at 1147–48 (observing that the case only "tangentially" involved vessels and noting that admiralty jurisdiction would still exist if the victim were a swimmer rather than a boater); *Dominguez*, 2004 WL 691251, at *2 (holding that the suit arose in admiralty without discussing the vessel's involvement); *Crowder*, 2000 WL 33342288, at *4, *6 (noting that the locality element of the *Sisson-Grubart* test did not require a vessel's involvement in the tort). The Coast Guard is only authorized to execute operations on the high seas and over waters that the United States has jurisdiction, 14 U.S.C. § 88(a) (2012), so the locality element of the

maritime commerce, admiralty law has developed to address tort claims arising from negligent maritime rescues.[159]

Federal courts clearly have admiralty jurisdiction over torts when either the Coast Guard or those being rescued were operating a vessel.[160] Under a vessel requirement test, however, federal courts would not have admiralty jurisdiction over torts when neither the Coast Guard nor the victims were using a vessel.[161] And absent admiralty jurisdiction, victims of negligent rescue by the Coast Guard are without a remedy because state courts cannot hear suits against the Coast Guard and the Coast Guard can only be sued in federal courts when admiralty jurisdiction is present.[162] This is because, as an agent of the United States, the Coast Guard can only be sued if Congress has waived sovereign immunity.[163] Congress has provided a limited waiver of sovereign immunity against the

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Sisson-Grubart test is usually readily satisfied. *See Dominguez*, 2004 WL 691251, at *2. Furthermore, many courts have established the general principle that the Coast Guard's operations are a traditional maritime activity and that negligence in executing an operation could potentially disrupt maritime commerce. *See Kelly*, 531 F.2d at 1148 (stating that in regard to the Coast Guard, "[i]t would be impossible to find an agency of our government with a closer relationship to maritime activity"); *Dominguez*, 2004 WL 691251, at *2 (discussing the Coast Guard's relationship with maritime commerce); *Crowder*, 2000 WL 33342288, at *6 (discussing the potential disruption of maritime commerce resulting from the Coast Guard's maritime arrests).

[159] *See Kelly*, 531 F.2d at 1147–48; *Dominguez*, 2004 WL 691251, at *2; *Crowder*, 2000 WL 33342288, at *6. Negligent Coast Guard rescues threaten maritime commerce because they can result in prolonged disruptions of navigation while the rescue is underway. *See Crowder*, 2000 WL 33342288, at *6. Additionally, water rescues not involving the Coast Guard also have the potential to disrupt maritime commerce and, thus, similarly fall within admiralty jurisdiction even if a vessel is not involved. *See* Roane v. Greenwich Swim Comm., 330 F. Supp. 2d 306, 308, 313–15 (S.D.N.Y. 2004) (holding that an injured swimmer's causes of action against a private vessel rescuer arose in admiralty, but leaving open the possibility for suits against rescuers not using vessels because neither the activity (life salvage) nor the tort (negligent life salvage) necessarily require a vessel in every instance). Finally, suits involving malfunctioning rescue equipment can also disrupt maritime commerce and, thus, also need protection under admiralty law. *See* Icelandic Coast Guard v. United Techs. Corp., 722 F. Supp. 942, 943, 946 (D. Conn. 1989) (granting admiralty jurisdiction to claims involving a helicopter's crash into a fjord on Iceland's coast and noting that objects and activities other than vessels and vessels' activities can interfere with maritime commerce); *see also* Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207, 209, 218–19 (1986) (noting that admiralty jurisdiction was proper when a helicopter crashed in navigable waters while carrying offshore drilling platform workers from the platform to the shore because this job was traditionally performed by a waterborne vessel).

[160] *See Kelly*, 531 F.2d at 1147–48; *Dominguez*, 2004 WL 691251, at *2; *Crowder*, 2000 WL 33342288, at *6.

[161] *See Kelly*, 531 F.2d at 1147–48; *Dominguez*, 2004 WL 691251, at *2; *Crowder*, 2000 WL 33342288, at *6.

[162] *See Dominguez*, 2004 WL 691251, at *1, *2.

[163] *Id.*; *cf.* Uralde v. United States, 614 F.3d 1282, 1288 (11th Cir. 2010) (noting that agents of the federal government cannot be sued unless sovereign immunity has been waived); Harrell v. United States, 443 F.3d 1231, 1234–35, 1239 (10th Cir. 2006) (same); Cassens v. St. Louis River Cruise Lines, Inc., 44 F.3d 508, 510–11 (7th Cir. 1995) (same).

Coast Guard, but only in the case of *admiralty* suits.[164] Thus, if plaintiffs cannot establish admiralty jurisdiction, they cannot sue the Coast Guard.[165]

E. Saving Admiralty Jurisdiction: A Call to Congress to Pass a New Act

Congress or the Supreme Court should act to ensure federal courts do not continue to unjustly deny admiralty jurisdiction to maritime torts that do not involve a vessel.[166] A strict application of the current two-part test for admiralty jurisdiction, as laid out by the Supreme Court and Congress, better protects maritime commerce than a vessel requirement test.[167] To prevent lower courts from denying admiralty jurisdiction to claims lacking the involvement of a vessel, the Supreme Court or Congress should act to clarify the current two-part test.[168] The Supreme Court could again address the test for admiralty jurisdiction and unequivocally hold that a vessel is not required.[169] The best remedy, however, would be for Congress to pass a statute that incorporated both the 1948 Act and the *Sisson-Grubart* test into a single act.[170] This new act is the best approach because it would eliminate the debate as to whether the 1948 Act is part of the *Sisson-Grubart* test or a stand-alone test for jurisdiction, while also explicitly clarifying that a vessel is not required to satisfy the locality or the connection elements of

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[164] *See* 46 U.S.C. § 30903(a) (2006) (waving the United States' sovereign immunity for admiralty suits); *supra* note 127 (discussing the SAA, which waives the United States' sovereign immunity for admiralty suits).

[165] *Dominguez*, 2004 WL 691251, at *1, *2; *see* 46 U.S.C. § 30903(a).

[166] *See supra* notes 86–116 and accompanying text (discussing how some lower courts require a vessel's involvement to establish admiralty jurisdiction); *supra* notes 127–165 and accompanying text (arguing that a vessel requirement thwarts the Supreme Court and Congress's intent for admiralty jurisdiction, forces judges to decide issues of fact at the outset of litigation, and inadequately protects maritime commerce).

[167] *See* 46 U.S.C. § 30101 (2006); *Grubart*, 513 U.S. at 534; *Sisson*, 497 U.S. at 360–67; Paré, *supra* note 28, at 201–02 (observing that admiralty jurisdiction was established to promote and protect maritime commerce); *supra* notes 79–85 and accompanying text (discussing the *Sisson-Grubart* test in more detail); *supra* notes 127–165 and accompanying text (discussing the problems surrounding a vessel requirement).

[168] *See supra* notes 86–116 and accompanying text (discussing how some lower courts require a vessel's involvement to establish admiralty jurisdiction); *supra* notes 127–165 and accompanying text (arguing that a vessel requirement thwarts the Supreme Court and Congress's intent for admiralty jurisdiction, forces judges to decide issues of fact at the outset of litigation, and inadequately protects maritime commerce).

[169] *Cf. Grubart*, 513 U.S. at 534 (illustrating the Supreme Court's capacity to influence admiralty jurisdiction); *Sisson*, 497 U.S. at 360–67 (same); *Foremost*, 457 U.S. at 669, 673, 677 (same); *Exec. Jet*, 409 U.S. at 268 (same); *supra* notes 66–85 and accompanying text (discussing the Supreme Court's four modern admiralty jurisdiction decisions).

[170] *See infra* notes 171–172 and accompanying text; *cf.* 46 U.S.C. § 30101 (providing an example that Congress has the power to adjust the scope of admiralty jurisdiction through legislative acts).

the *Sisson-Grubart* test.[171] Such an act could simply state: admiralty jurisdiction of the United States extends to torts that: (1) involve injuries or damage that occur on navigable water, whether involving a vessel or not, and injuries or damage that occur on land that are caused by a vessel on navigable water; (2) are of the type that could potentially disrupt maritime commerce, whether involving a vessel or not; and (3) involve a type of activity that bears a substantial relationship to traditional maritime activities, whether involving a vessel or not.[172]

Conclusion

Admiralty jurisdiction was created to protect maritime commerce and other traditional maritime activities. To fulfill this purpose, torts occurring on navigable waters that do not involve a vessel must be able to establish admiralty jurisdiction. The current test for admiralty jurisdiction, as expressed by the Supreme Court, is a two-part test that contains both a location element and a connection element and does not require a vessel to be involved. Despite the Supreme Court's test, many lower courts have arbitrarily imposed a condition that the suit must involve a vessel to establish admiralty jurisdiction for in personam tort claims. A vessel requirement test is laden with problems. First, a vessel requirement violates the spirit of the Extension of Admiralty Jurisdiction Act and hinders Congress's intent for admiralty jurisdiction. Such a requirement may also inappropriately force a judge to render an intensive factual investigation at the outset of litigation. Furthermore, a vessel requirement test inadequately protects maritime commerce because some forms of maritime commerce, such as professional SCUBA diving, do not involve vessels. Finally, this vessel requirement excludes many operations outside of maritime commerce, like Coast Guard rescues, that may disrupt maritime commerce. Thus, to adequately protect maritime commerce, Congress or the Supreme Court must act to stop lower courts from requiring that a tort involve a vessel to establish admiralty jurisdiction for in personam tort suits. Congress, in particular, could pass a new act that would en-

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[171] *See Grubart*, 513 U.S. at 534 (discussing the current two-part test for admiralty jurisdiction); *Sisson*, 497 U.S. at 360–67 (same); *supra* note 84 (discussing this debate). Recall that this debate is problematic, as courts that hold the 1948 Act provides for an independent jurisdiction analysis decline to impose the *Sisson-Grubart* connection element and contribute to the creation of disunified admiralty jurisdiction standards. *See* Robertson & Sturley, *supra* note 55, at 239–40. A unified test creates consistency in granting admiralty jurisdiction and thus promotes uniform admiralty law, which is the best way to protect maritime commerce. *See* Burrell, *supra* note 37 at 69 (explaining that uniform admiralty law best protects maritime commerce); Perry, *supra* note 28, at 824 (same); Rue, *supra* note 37, at 1147 (same).

[172] *See supra* notes 86–116 and accompanying text (discussing how some lower courts require a vessel's involvement to establish admiralty jurisdiction); *supra* notes 127–165 and accompanying text (illustrating the need for clarification that admiralty jurisdiction does not require the involvement of a vessel).

compass previous legislation and explicitly extend admiralty jurisdiction to applicable torts not involving a vessel. Such an act could save admiralty jurisdiction from sinking into the abyss.

MONICA THOELE