Nos. 93-762 and 93-1094

In the Supreme Court of the United States

OCTOBER TERM, 1993

JEROME B. GRUBART, INC., *Petitioner,*

v.

GREAT LAKES DREDGE & DOCK COMPANY, *Respondent.*

CITY OF CHICAGO, *Petitioner,*

v.

GREAT LAKES DREDGE & DOCK COMPANY and JEROME B. GRUBART, INC., *Respondents.*

On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES, AS *AMICUS CURIAE,* IN SUPPORT OF THE RESPONDENT, GREAT LAKES DREDGE & DOCK COMPANY

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QUESTIONS PRESENTED

1. Whether the flooding of land structures caused by a vessel's activities on navigable waters is within the admiralty and maritime jurisdiction of the district court pursuant to 28 U.S.C. § 1333 and Article III, Sec. 2, of the Constitution.

2. Whether the flooding of land structures caused by a moored vessel's activities on navigable waters, which also resulted in the closing of those navigable waters to all commerce, satisfies the test for admiralty jurisdiction set forth in *Sisson v. Ruby*, 497 U.S. 358 (1990).

3. Whether the Admiralty Extension Act, 46 U.S.C. § 740, provides a separate basis of admiralty jurisdiction.

4. Whether the Limitation of Liability Act, 46 U.S.C. § 181, *et seq.*, provides a basis of admiralty jurisdiction separate and apart from jurisdiction under 28 U.S.C. § 1333.

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The Maritime Law Association of the United States ("MLA") respectfully submits this brief as *amicus curiae* in support of the Respondent, Great Lakes Dredge & Dock Company ("Respondent"). Both Petitioners and Respondent have consented to the MLA's participation, and copies of the consent forms will be filed concurrently herewith.

NATURE OF MLA'S INTEREST

MLA has a strong interest in this case because it involves important issues of maritime law, and because the Court's decision may substantially affect the uniformity of maritime law. MLA is a nationwide bar association founded in 1899 and incorporated in 1993. Its membership of approximately 3,600 includes attorneys, judges, law professors and others interested in maritime law. It is affiliated with the American Bar Association ("ABA") and is represented in ABA's House of Delegates.

MLA's attorney members, most of whom are specialists in admiralty law, represent all maritime interests—shipowners, charterers, cargo owners, shippers, forwarders, port authorities, seamen, longshoremen, stevedoring companies, passengers, marine insurance underwriters and brokers and all other maritime plaintiffs and defendants.

MLA's purposes are stated in its Articles of Incorporation:

> The objectives of the Association shall be to advance reforms in the Maritime Law of the United States, to facilitate justice in its administration, *to promote uniformity in its enactment and interpretation*. . . .

(Emphasis added).

The MLA has sponsored a wide range of legislation dealing with maritime matters, including the Carriage of Goods by Sea Act and the Federal Arbitration Act. 46 U.S.C. §§ 1300-1315; 9 U.S.C. §§ 1-16. The MLA has also cooperated with congressional committees in the formulation of other maritime legislation.[1]

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[1] *E.g.*, 1972 Water Pollution Control Act Amendments, 33 U.S.C. §§ 1251-1376 (1988); implementation of the 1972 Convention for

(continued...)

On April 25, 1975, the MLA passed a resolution urging congressional committees "that nationwide and, in fact, world-wide uniformity in the Maritime Law is highly desirable, not only from the standpoint of those involved with maritime commerce but from that of the public as well."[2] A substantially identical resolution was adopted by the American Bar Association in 1976. The MLA reaffirmed this resolution in 1986.[3]

In furtherance of its uniformity of maritime law policy, MLA has filed a number of *amicus* briefs accepted by this Court[4] in important issues of maritime law where the Court's decision would substantially affect the uniformity of maritime law. Such a situation exists in this case.

The maritime jurisdiction of federal courts is provided by the Constitution and is the cornerstone upon which uniformity of U.S. maritime law has been built. If maritime interests were governed by the laws of the fifty states, it would create an unworkable patchwork of laws that would defeat uniformity and inhibit the free flow and use of navigable waters.

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[1] (...continued)
Preventing Collisions at Sea, 28 U.S.T. 3459, 1050 U.N.T.S. 16, *amended* by T.I.A.S. No. 10672, 1143 U.N.T.S. 346, *reprinted* in 6 BENEDICT ON ADMIRALTY, Doc. No. 3-4 (7th rev'd ed. 1993) [BENEDICT] at p. 3-34.1, *see* 33 C.F.R. ch. 1, subch. D, Special Note, at 160 (1987); United States Inland Navigation Rules, 33 U.S.C. §§ 2001-2073 (1988).

[2] MLA Minutes, MLA Doc. No. 588 at 6397-98 (1975).

[3] MLA Minutes, MLA Doc. No. 669 at 8769 (1986).

[4] *E.g.*, *Sisson v. Ruby*, 497 U.S. 358 (1990); *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140 (1988); *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986); *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978); *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325 (1973). For a more comprehensive listing, see MLA Report, MLA Doc. No. 671 at 8862-63 (1987).

SUMMARY OF ARGUMENT

This case involves the flooding of shore structures caused by a vessel on a navigable waterway which breached the river bed, closing that waterway to all commerce. Such an occurrence is within the admiralty and maritime jurisdiction because (1) it occurred on navigable waters and (2) it involved a vessel. The MLA urges this Court to adopt this modified "situs" test for admiralty tort jurisdiction. Such a test will assist in providing a uniform set of laws for the use of navigable waters by vessels, a primary purpose of constitutional grant of admiralty jurisdiction. It is imperative to adopt this modified "situs" test because the lower courts have been unable to apply the nexus requirements of this Court's decisions in *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249 (1972), *Foremost Insurance Co. v. Richardson*, 457 U.S. 668 (1982) and *Sisson v. Ruby*, 497 U.S. 358 (1990) in uniform a manner.

Admiralty jurisdiction also exists, even if the nexus test as most recently explained in *Sisson* is applied to the facts of this case. The Seventh Circuit correctly decided that the flooding of land structures caused by a moored vessel's activities on navigable waters, which also resulted in the closing of those navigable waters to all commerce, satisfied the two-part analysis under *Sisson*. Admiralty jurisdiction is also supplied by the Admiralty Extension Act, which extends jurisdiction to all cases of injury or damage caused by a vessel on navigable water, even if such damage is consummated on land. Further, jurisdiction exists under the Limitation of Liability Act, which allows a vessel owner to seek limitation or exoneration from liability in relation to liabilities both maritime and non-maritime.

ARGUMENT

I.

TORTS ARISING ON OR CAUSED BY VESSELS ON NAVIGABLE WATERS ARE WITHIN THE ADMIRALTY JURISDICTION.

A. Introduction.

For the fourth time in twenty-two years, and for the third time in twelve years, this Court has found it necessary to take a case so that it may clarify and define the boundaries of admiralty tort jurisdiction.[5] Jurisdictional confusion has existed since this Court adopted a "nexus" test with respect to admiralty tort jurisdiction in *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249 (1972). The jurisdictional confusion engendered by the nexus test may only be ended by recognizing that the test should be limited to cases not involving vessels. In other words, admiralty tort jurisdiction should exist in all cases where (1) the tort occurs on navigable waters *and* (2) the tort occurs on or is caused by a vessel.[6] No further inquiry should be necessary. Only where a vessel is not so involved should the courts employ the "nexus" test. By adopting this approach, the Court would add certainty and uniformity to the jurisdictional inquiry over which the lower courts clear-

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[5] *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249 (1972); *Foremost Insurance Company v. Richardson*, 457 U.S. 668 (1982); *Sisson v. Ruby*, 497 U.S. 358 (1990) and now this case.

[6] This is essentially the same test that counsel for *Amicus* MLA argued when they represented petitioner Everett Sisson before this Court four years ago. The rationale advanced at that time was that this test provides a clear and precise set of criteria for determining jurisdiction and eliminates the uncertainty manifested in the decisions of the lower courts. The aftermath of *Sisson* has only confirmed the correctness of that rationale and the continued need for a simplified test.

ly remain confused. At the same time, this approach would properly address the traditional concerns of the maritime law.

B. The Constitutional Grant Of Admiralty And Maritime Jurisdiction To The Federal Courts Should Be Broadly Construed.

Article III, Section 2 of the U.S. Constitution grants U.S. judicial power to "all cases of admiralty and maritime jurisdiction." According to this Court, the Constitution establishes three different grants of power:

> (1) It empowered Congress to confer admiralty and maritime jurisdiction on the "Tribunals inferior to the Supreme Court" which were authorized by Art. I, § 8, cl. 9. (2) It empowered the federal courts in their exercise of the admiralty and maritime jurisdiction which had been conferred on them, to draw on the substantive law "inherent in the admiralty and maritime jurisdiction," [citation omitted], and to continue the development of this law within Constitutional limits. (3) It empowered Congress to revise and supplement the maritime law within the Constitution.

Romero v. International Terminal Operating Co., 358 U.S. 354, 360-61 (1959).

Since the early days of this nation, the constitutional grant of admiralty and maritime jurisdiction to the federal courts has been broadly construed. Justice Story noted that the addition of the term "maritime" in the constitutional grant of power was purposeful, and that jurisdiction was broader than just the term "admiralty" as it existed under English law and called for the most liberal interpretation:

> [T]he Constitution not only confers admiralty jurisdiction, but the word "maritime" is super added, seemingly ex industria to remove every latent doubt. "Cases of maritime jurisdiction" must include all

> maritime contracts, torts and injuries, which are in the understanding of the common law, as well as of the admiralty, "causae civiles et maritime." In this view there is a peculiar propriety in the incorporation of the term "maritime" into the Constitution. The disputes and discussions, respecting what the admiralty jurisdiction was, could not but be well known to the framers of that instrument. [Citation omitted]. One party sought to limit it by locality, another by the subject matter. It was wise, therefore, to dissipate all question by giving cognizance of all "cases of maritime jurisdiction," or, what is precisely equivalent, of all maritime cases.
>
> . . . [T]he language of the Constitution will therefore warrant the most liberal interpretation. . . .
>
> The advantages resulting to the commerce and navigation of the United States, from a uniformity of rules and decisions in all maritime questions, authorized us to believe the national policy, as well as juridical logic, require the clause of the Constitution to be so construed, as to embrace all maritime contracts, torts and injuries, or, in other words, to embrace all those causes, which originally and inherently belonged to the admiralty, before any statutable restriction.

Delevio v. Boit, 7 F. Cas. 418, 442-43 (C.C.D. Mass. 1815).

There has been no development since Justice Story wrote these words which warrants a restriction of the Court's admiralty and maritime jurisdiction. For more than 150 years, the federal courts applied a broad locality test to determine whether a tort action fell within the admiralty jurisdiction. Under this "locality" or "situs" test, admiralty jurisdiction existed where an injury occurred on navigable waters. *Thomas v. Lane*, 23 F. Cas. 957, 960 (C.C.D. Ma. 1813). The situs test was later expanded to include all navigable waters, encompassing the U.S. inland waterway system of lakes and rivers. *The Propeller Genesee Chief v.*

Fitzhugh, 53 U.S. (12 How.) 443 (1852). Further, this Court clarified that both the wrong and the injury must have been "wholly committed" upon navigable waters for jurisdiction to exist. *The Plymouth*, 70 U.S. (3 Wall.) 20 (1856). The Court later reiterated this principle by holding that damage to a bridge caused by a vessel was damage to a shore structure, and was not within the "locality" rule. *Martin v. West*, 222 U.S. 191 (1911). Congress subsequently exercised its constitutional power to statutorily define admiralty and maritime jurisdiction by overruling a strict locality test through the Admiralty Extension Act, 46 U.S.C. § 740. *See Executive Jet*, 409 U.S. at 260.

C. The Recommended Test For Admiralty Jurisdiction Is A Modified Situs Test.

There were no major difficulties in applying the situs test until *Executive Jet*, a case involving an aviation accident on domestic navigable waters. This Court held that in an aviation case, the wrong must "bear a significant relationship to traditional maritime activity." *Executive Jet*, 409 U.S. at 268. (The "nexus test"). This Court did not rule in *Executive Jet* that the locality rule had been abandoned with respect to vessels. In fact, *Executive Jet* "could be understood as resting on the quite simple ground that the tort did not involve a vessel, which had traditionally been thought required by the leading scholars in the field . . . [a]t the very least, the opinion conveyed the strong implication that a case involving a tort occurring 'in connection with a waterborne vessel' . . . would be deemed within the admiralty jurisdiction without further inquiry." *Sisson*, (Justice Scalia, concurring), 497 U.S. at 369-70 (citations omitted).

Following *Executive Jet*, federal courts developed various tests for determining the requisite "nexus", even

where there had been no need before.[7] In *Foremost* and *Sisson*, this Court attempted to respond to the confusion evident in the lower courts' application of the *Executive Jet* nexus test to situations outside the factual context of *Executive Jet*. But truly, there was no need to apply a nexus test in either case, as both involved vessels. Indeed, the result of *Sisson* only confirms that the Court has, for all practical purposes, *already* adopted the modified "situs" test the MLA proposes: *Sisson* involved a fire on a pleasure vessel docked in a marina on Lake Michigan. *The vessel was doing nothing*. If the injury in *Sisson* is within the admiralty jurisdiction where the vessel was just docked, then any wrong occurring on or caused by a vessel on navigable waters should be considered within such jurisdiction, especially if the vessel is doing *something*, as it was in this case, i.e. moored and driving pilings.

Thus, by establishing admiralty jurisdiction over torts which (1) occur on navigable waters *and* (2) which occur on or are caused by a vessel, this Court would recognize explicitly, as *Sisson* does implicitly, that everything a vessel does in navigable waters is related to traditional maritime activity. This modified "situs" test is straightforward and accurately encompasses the jurisdictional interests of the admiralty and maritime law. This test is facilitated by the fact that a statutory definition of "vessel" already exists. Congress has consistently defined "vessel" to include all

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[7] Many followed some variation of the test developed in *Kelly v. Smith*, 485 F.2d 520 (5th Cir. 1973), *cert. denied*, 416 U.S. 969 (1974). The *Kelly* court decided that a four-factor test should be applied: (1) the functions and roles of the parties; (2) the types of vehicles and instrumentalities involved; (3) the causation and type of injury; and (4) traditional concepts of the role of admiralty law. As the number of factors rose, so did the number of cases with varying results, some unduly limiting maritime jurisdiction to cases directly involving maritime commerce.

manner of craft, including barges, tugs, freighters, ferry boats, excursion boats and fishing boats "used or capable of being used as a means of transportation on water."[8] With the proposed test, the courts could dispense with the *ad hoc*, case-by-case analyses which have so muddied the jurisdictional waters and threatened the uniformity of maritime law. Further, the test is flexible enough to respond to maritime technology changes, and it would lead to uniformity in law applicable to vessel casualties on navigable water.

D. The Lower Courts Remain Confused After *Sisson*.

The need for the modified "situs" test is demonstrated by the confusion which has increased after the *Sisson* decision. Despite this Court's clear intent to end the multi-factored jurisdictional tests which flourished after *Executive Jet* and *Foremost*, the lower courts have continued to apply the same tests they employed prior to *Sisson*, reverting back to the jurisdictional analysis set forth in *Kelly v. Smith*, 458 F.2d 520 (5th Cir. 1973), *cert. denied*, 416 U.S. 969 (1974), or variations thereof.

For instance, the Third Circuit and Fourth Circuit, while acknowledging they were bound by *Sisson*, continue to use the *Kelly* factors. *Sinclair v. Soniform, Inc.*, 935 F.2d 599, 602 (3d Cir. 1991); *Price v. Price*, 929 F.2d 131 (4th Cir. 1991). Many courts have interpreted *Sisson* as neither approving nor disapproving of the *Kelly* analysis, and therefore continue to apply *Kelly* in determining the existence of admiralty jurisdiction. *Broughton Offshore Drilling v. South Cent. Mach., Inc.*, 911 F.2d 1050 (5th Cir. 1990); *Dean v. Maritime Overseas Corp.*, 770 F. Supp. 309 (E.D. La. 1991),

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[8] 1 U.S.C. § 3.

aff'd, 981 F.2d 1256 (5th Cir. 1992); *Coats v. Penrod Drilling Corp.*, 5 F.3d 877 (5th Cir. 1993), *cert. denied*, 114 S. Ct. 1303 (1994), *reh'g granted*, No. 93-1209, 1994 WL 157065 (5th Cir. April 24, 1994); *Johnson v. Colonial Pipeline Co.*, 830 F. Supp. 309 (E.D. Va. 1993); *Efferson v. Kaiser Aluminum & Chemical Corp.*, 816 F. Supp. 1103 (E.D. La. 1993); *Palmer v. Fayard Moving & Transp. Corp.*, 930 F.2d 437 (5th Cir. 1991); *Fox v. Southern Scrap Export Co.*, 618 So. 2d 844 (La. 1993). Still other courts have applied a modified version of the *Kelly* analysis noting that only the "causation" factor of the inquiry has been precluded by *Sisson*. *See Delta Country Ventures, Inc. v. Magana*, 986 F.2d 1260 (9th Cir. 1993); *Whitcombe v. Stevedoring Services of America*, 2 F.3d 312 (9th Cir. 1993).

Some courts have combined the *Kelly* and *Sisson* inquiries to determine whether admiralty jurisdiction exists. *See Antoine v. Zapata Haynie Corp.*, 777 F. Supp. 1360 (E.D. Tex. 1991); *Ozzello v. Peterson Builders, Inc.*, 743 F. Supp. 1302 (E.D. Wis. 1990). Citing *Sisson* as only a secondary source, the court in *Torres v. City of New York*, 581 N.Y.S.2d 194 (N.Y. App. Div. 1992), *cert. denied*, 113 S. Ct. 1584 (1993), declined to use the two-part "expanded" nexus test of *Sisson* in determining admiralty jurisdiction.

Aside from the Seventh Circuit, only a few courts have actually relied on *Sisson* or have cited *Sisson* as their authority in determining the existence of admiralty jurisdiction.[9] However, even while attempting to adhere to the guidelines of *Sisson*, some courts clearly disagree as to the proper

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[9] *See, e.g., Royal Insurance Co. v. Marina Industries*, 611 S.E.2d 416 (Mass. App. Ct. 1993); *General Chemical Corp. v. De La Lastra*, 852 S.W.2d 916 (Tex. 1993), *cert. dismissed*, 114 S. Ct. 490 (1993); *Mizenko v. Electric Motor & Contracting Co.*, 419 S.E.2d 637 (Va. 1992); *Bergeron v. Blake Drilling & Workover Co.*, 599 So. 2d 827 (La. App. 1992).

interpretation to be placed on the various parts of the inquiry, particularly with respect to the characterization of the relevant activity.[10]

While the Seventh Circuit was able to apply *Sisson* correctly and reach the correct result, most other courts have either misinterpreted, misapplied or ignored the decision. The confusion found in this post-*Sisson* history will undoubtedly continue unless this Court adopts a modified "situs" test and reserves the *Sisson* "nexus" test for the truly unusual cases which do not involve vessels. Indeed, since the primary interest of the admiralty jurisdiction is to protect the use of navigable waters by vessels, it is suggested that only the first prong of the *Sisson* test (i.e., whether the incident posed a potential hazard to maritime commerce) is needed. It is the second prong of *Sisson*—defining the relevant "activity" and its relationship to traditional maritime activity—which has created the greatest confusion for the lower courts.

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[10] *See In re Bird*, 793 F. Supp. 575 (D.S.C. 1992); *Delta Country Ventures, Inc. v. Magana*, 986 F.2d 1260 (9th Cir. 1993) (court divided over the characterization of the "relevant activity" under *Sisson* analysis and abandons *Sisson* for *Kelly* approach); *Stanton v. Bayliner Marine Corp.*, 844 P.2d 1019 (Wash. Ct. App. 1992), *rev'd*, 866 P.2d 15 (Wash. 1993); *Penton v. Ponpano Constr. Co.*, 976 F.2d 636 (11th Cir. 1992); *Woltering v. Outboard Marine Corp.*, 615 N.E.2d 86 (Ill. App. Ct. 1993), appeal denied, 622 N.E.2d 1229 (Ill. 1993), *petition for cert. filed*, 62 U.S.L.W. 3493 (1994).

II.

ADMIRALTY JURISDICTION IN TORT EXISTS IN THIS CASE UNDER THE *SISSON* TEST.

A. The Seventh Circuit Correctly Applied *Sisson*.

Should this Court decline to adopt a modified "situs" test, it should nonetheless affirm the Seventh Circuit's decision as a faithful application of the test for admiralty jurisdiction set forth in *Sisson v. Ruby*, 497 U.S. 358 (1990).

In *Sisson*, this Court formulated a "nexus" test consisting of two inquiries: (1) whether the incident posed a potential hazard to maritime commerce and (2) whether the activity giving rise to the incident bears a substantial relationship to traditional maritime activity. *Id.* at 362-365. With respect to the first inquiry, this Court determined the potential impact of the incident by examining its *general* features or character, rather than focusing on the particular facts of the incident. In *Sisson*, the general features of the incident were a fire on a vessel docked at a marina in navigable waters, which "plainly" satisfied the potential hazard requirement given that the fire might spread to nearby commercial vessels or prevent such vessels from using the marina. *Id.* at 362-63.

Regarding the second inquiry, this Court stressed that it is not necessary for lower courts to ascertain the precise cause of the harm. Rather, in defining the relevant activity, the focus should be on the general conduct from which the incident arose. *Id.* at 364-65. In *Sisson*, the general activity was the storage and maintenance of a vessel at a marina on navigable waters; the fact that the fire originated in a clothes dryer was immaterial. The Court held this activity was substantially related to traditional maritime activity because "docking a vessel at a marina on a navigable waterway is a common, if not indispensable, maritime activity." *Id.* at 367. If the activity of a pleasure boat docked for

maintenance and storage at a recreational marina is a traditional maritime activity, it is indeed difficult to conceive of any activity of any vessel which would not qualify under the *Sisson* test. This Court clearly intended a *broad* and *liberal* interpretation of the *Executive Jet* and *Foremost* "nexus" principles.

In this case, the Seventh Circuit was faithful to the Court's clear purpose in *Sisson*. The underlying "situs" requirement was satisfied because the incident occurred on the Chicago River, a long-established navigable waterway. *Escanaba Co. v. City of Chicago*, 107 U.S. 678 (1883). For the first part of the "nexus" inquiry, the court focused on the general character of the incident: pile driving from moored barges in a navigable waterway which ultimately caused the collapse of a submerged tunnel and flooding of the nearby business district. *Great Lakes Dredge & Dock Co. v. City of Chicago*, 3 F.3d 225, 230 (7th Cir. 1993).[11] Here, there was no question that the incident engendered by such pile driving in fact disrupted all commerce on the Chicago River for more than a month. *Id.* 3 F.3d at 226, 228. For the second part of the "nexus" test, the Seventh Circuit examined the general conduct or activity from which the incident arose, which it found to be "the sinking of

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[11] The City and Grubart argue that the Seventh Circuit erred because it essentially viewed the "incident" as being the same as the "activity." But petitioners are engaging in semantics. The Seventh Circuit recognized in analyzing this question that the *activity* of driving piles in a navigable waterway caused the perforation of the tunnel and the consequent flood which in fact closed the waterway to all vessel traffic. At the end of its analysis of this question, the Seventh Circuit states "Here we need not engage in any such inquiry [i.e., was the incident likely to disrupt commercial activity], since we know to an absolute certainty that Great Lakes' *activity, and the incident it engendered,* had the potential to disrupt maritime commerce." *Great Lakes Dredge & Dock Co.*, 3 F.3d at 230 n.7 (emphasis added).

pilings into a river bed." Because such pilings serve, in part, to protect ships from collisions with bridges and aid navigation, their installation relates to maritime activity. *Id.* at 230.

Jurisdiction exists and the Seventh Circuit should be affirmed. The "incident" here is a commercial vessel's perforation of a submerged tunnel structure,[12] which drained substantial water from a navigable river, flooded the tunnel, communicated damage to nearby shore structures and disrupted maritime commerce by closing a navigable waterway to all maritime traffic. There is also a substantial relationship between the activity giving rise to the incident and traditional maritime activity. Petitioners argue that pile driving is really a land based activity and urge the Court to focus on this as an important factor.[13] Although the Seventh Circuit does describe pile driving as the "activity", *Sisson* dictates an even more general description:

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[12] Other courts have recognized that claims arising from vessels which cause damage to submerged structures are within the admiralty jurisdiction, and have even allowed limitation of liability in such cases. *See Marathon Pipe Line Co. v. Drilling Rig ROWAN/ODESSA*, 761 F.2d 229 (5th Cir. 1985) (general maritime law applied to collision between the leg (spud) of towed drilling rig and a pipeline on the seabed); *Signal Oil & Gas Co. v. Barge W-701*, 654 F. 2d 1164 (5th Cir. 1981), *cert. denied*, 455 U.S. 944 (1982) (barge engaged in pipeline construction on ocean floor permitted to limit liability for damages caused when anchor fouled on pipeline). Applying the principles of those cases, surely there would have been no dispute as to admiralty jurisdiction in this case if a vessel dragging its anchor in the river damaged an electrical cable, cutting off power to the city, or if the anchor perforated the tunnel.

[13] In any event, it is *immaterial* that pile driving is not uniquely maritime. Vessels engage in numerous activities which are not uniquely maritime: carriage of goods (vessel or truck), carriage of passengers (vessel or train), dredging (earthmoving), laying cable, fishing, docking (parking), *drying* clothes, etc.

the general character of the "activity" was the anchoring or mooring of a vessel to perform work in a navigational channel (in *Sisson*, the activity was the mooring of a yacht). It is immaterial that the cause of the incident was pile driving, just as it was immaterial in *Sisson* that the fire was caused by a clothes dryer, arguably a "land" based instrumentality. The broad principles of *Sisson* are satisfied. Maritime jurisdiction exists.

B. It Is Immaterial To The Jurisdictional Inquiry That One Of The Parties Is Not Engaged In Traditional Maritime Activities.

The petitioners essentially urge this Court to adopt a "totality of the circumstances" test for admiralty tort jurisdiction to determine whether there is a sufficient "federal" interest, claiming that *Sisson* is inapplicable to this case. The crux of their argument is that *Sisson* left open for future decision a case where one of the "instrumentalities" in a case is involved in a traditional maritime activity, but the other is not, citing *Sisson*, 497 U.S. at 358 n.3. Based on this footnote, they claim it was wrong for the Seventh Circuit to focus solely on the activities of Great Lakes and ask the Court to adopt a new test.

Petitioners have read far too much into footnote 3 of *Sisson*. The Court merely stated that different issues "*may*" be raised where not all of the parties or instrumentalities are engaged in a traditional maritime activity. In its own analysis in *Sisson*, the Court focused solely on the activities of Sisson's boat. The result in *Sisson* would not have been different if the fire had spread to a shore structure *not* connected with any traditional maritime activities. The fact that one of the parties or "instrumentalities" may not be involved in a traditional maritime activity is truly irrelevant to the jurisdictional inquiry. The *Sisson* test suffices.

For instance, consider the possibility of a commercial vessel colliding with the channel wall of the Chicago River, exploding and killing patrons of a restaurant happily eating lunch in a riverside cafe. Suppose a vessel collides with the levee on the Mississippi River in St. Louis, through which river water spills and floods land-based structures. In both examples, the injured parties are not engaged in traditional maritime activities, but both are clearly within maritime jurisdiction.

The most likely source of a party not involved in traditional maritime activities *is the land*. The obvious answer to this supposed dilemma is already available through the Admiralty Extension Act, 46 U.S.C. § 740. There is no need for a *separate* test for such potential plaintiffs. The Seventh Circuit was correct in holding that any jurisdictional difficulty with the fact that damage was communicated from ship to shore is solved by the Extension Act.

C. Federal Maritime Interests Are Involved In This Case.

Petitioners also argue that no "federal" interests are at stake in this case. However, the fact that this matter arose from commercial activity on a navigable waterway of the United States used for interstate commerce is certainly interest enough.[14] Such waters are regulated by the U.S. Coast Guard and the U.S. Army Corps of Engineers. Bridges themselves are impediments to navigation and their construction and maintenance, and construction of

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[14] Indeed, the amount of water drained into the Chicago River from Lake Michigan has been recognized as a federal interest affecting navigable waters and is subject to a continuing injunction from this Court. *State of Wisconsin v. State of Illinois,* 449 U.S. 48 (1980); *former decisions* (inter alia), 388 U.S. 426 (1967); 281 U.S. 696 (1930); 278 U.S. 367 (1929); 266 U.S. 405 (1925).

pilings, are the subject of federal statutes and regulations. 33 U.S.C. § 491, *et seq.*; 33 U.S.C. § 511, *et seq.*; 33 C.F.R. Part I, Subchapter J. The Chicago River itself is subject to specific federal regulations governing the operation of its numerous drawbridges. 33 C.F.R. § 117.391. Moreover, the City appeared before this Court in *West Chicago St. Railroad Co. v. People of the State of Illinois Ex. Rel. City of Chicago*, 201 U.S. 506 (1906) and argued that the railroad company which built the tunnels under the Chicago River should be compelled to lower those tunnels because Congress had passed legislation finding them to be an obstruction to navigation (the City now owns the tunnels). This Court agreed that the federal interest in unobstructed navigable waters extended to the soil underneath the bed of those waters, stating that the rights of the railroad "as owner of the fee of land on either side of the river or in its bed were subject to the paramount right of navigation over the waters of the river." 201 U.S. at 524. The City cannot be heard to argue that an incident arising from the maintenance of a navigable channel around a bridge which damages a submerged tunnel, both of which are obstructions to navigation, impacts no federal maritime interests, especially where the City took that position itself in legislation and now even owns the tunnels.[15]

It is immaterial to this case that numerous land-based persons are victims of an event arising from activities soundly within this federal maritime arena. Any number of situations can be imagined where an incident arising from

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[15] The tunnel system has an additional connection to navigation upon the Chicago River: a major source of traffic for the tunnel system was the removal of excavation materials from city construction sites which were dumped into barges at river terminals connected to the system. Bruce Moffat, *Forty Feet Below: The Story of Chicago's Freight Tunnels* (1st ed. 1982).

the activities of a vessel on navigable waters has disastrous effects on land-based parties.[16] It even can be said that the federal interest is stronger in situations where a federally regulated activity causes a disaster.

D. Maritime Jurisdiction Provides A Fair Forum And Fair Remedies.

Petitioners also raise quasi-due process arguments by claiming it is unfair to require the City and the other Claimants to have their claims decided in federal court under the maritime law. They argue they had no notice they might be subject to such law and jurisdiction and that their rights and remedies are dramatically restricted. The City is certainly on notice that actions it takes with respect to its numerous bridges over the Chicago River are potentially subject to litigation in a federal maritime court.[17] But

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[16] *See, e.g., In re Texas City Disaster Litigation*, 197 F.2d 771 (5th Cir. 1952), *aff'd sub nom., Dalehite v. United States*, 346 U.S. 15 (1953) (explosion of fertilizer aboard cargo ship resulted in 988 personal injury and death claims and 5,987 property damage claims from persons in and around Texas City, Texas). Related case: *Republic of France v. United States*, 290 F.2d 395 (5th Cir. 1961), *cert. denied*, 396 U.S. 804 (1962) (vessel owner's petition for Limitation of Liability for disaster, vessel owner held not liable).

[17] The City's contention that it did not have fair notice that it might be "haled" into federal court under admiralty jurisdiction is belied by the fact that the City has been litigating cases involving its bridges over the Chicago River in the federal courts under admiralty jurisdiction for more than one hundred years. *See, e.g., N.M. Paterson & Sons Ltd. v. City of Chicago*, 324 F.2d 254 (7th Cir. 1963) (admiralty action arising out of collision between steamship and bridge over Chicago River); *Eastern S.S. Corp. v. City of Chicago*, 47 F.2d 1017 (7th Cir. 1931) (steamship collision with Harrison Street bridge on Chicago River); *City of Chicago v. Chicago Transp. Co.*, 222 F. 238 (7th Cir. 1915) (continued...)

as already noted, the City itself has brought maritime litigation with respect to the tunnel system because that system is an obstruction to navigation. *West Chicago*, 201 U.S. 506. The City chose to enter this federal arena by constructing bridges over the Chicago River which restrict the width of the channel and the free movement of masted and unmasted river traffic.[18] It should not be a surprise to the residents of downtown Chicago, which is essentially an island accessible only by bridges (see maps at Appendix A), that the river might flood the downtown district due to a maritime accident.

The Claimants aside from the City are also in a potentially better position under the maritime law. As Grubart

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[17] (...continued)
(schooner collision with bridge over Chicago River); *City of Chicago v. Michigan I. & I. Line*, 201 F. 89 (7th Cir. 1912) (collision of steamer with Lake Street bridge over Chicago River); *Munroe v. City of Chicago*, 194 F. 936 (7th Cir. 1912) (steamer collision with Taylor bridge over Chicago River); *City of Chicago v. Mullen*, 116 F. 292 (7th Cir. 1902) (schooner collision with Kinzie Street bridge over the Chicago River); *See also Thompson Navigation v. City of Chicago*, 79 Fed. 984 (N.D. Ill. 1897) (admiralty suit arising out of collision between city fire tug and another vessel in Chicago River).

[18] The City of Chicago owns, operates and maintains more movable bridges than any other public agency in the world. As the City itself has boasted:

> It is safe to say that the City of Chicago owes its very existence to the great natural waterway connection between the Great Lakes and the Mississippi River basin—The Checaugou Portage. It is also true that Chicago could not have attained its present magnitude as one of the great cities of the world without the great trunnion bascule bridges developed by successive generations of devoted and determined engineers and builders.

City of Chicago, Richard J. Daley, Mayor, *The Movable Bridges of Chicago* (1970).

itself points out, the City lacks immunity under substantive maritime law. *City of Chicago v. White Transportation*, 243 F. 358 (7th Cir. 1917). Further, the maritime law provides for prejudgment interest in nearly all cases. *Hillier v. Southern Towing Co.*, 740 F.2d 583 (7th Cir. 1984). Should the district court decide that Great Lakes is not entitled to limitation of liability, it has the option of remanding the case to the state court, where the Claimants may pursue their actions under the Savings to Suitors Clause, 28 U.S.C. § 1333(1), allowing all state law remedies and a jury trial, subject to the substantive maritime law. 3 *Benedict on Admiralty*, §§ 12, 51 (7th ed. 1993). In sum, the Petitioners' equitable or due process arguments are misplaced.

III.

THE ADMIRALTY EXTENSION ACT CONFERS JURISDICTION IN THIS CASE.

The Admiralty Extension Act, 46 U.S.C. § 740, enacted in 1948, extended admiralty jurisdiction to all cases of damage or injury caused by a vessel on navigable waters "notwithstanding that such damage or injury be done or consummated on land."[19] The underlying purpose of the Act is to broaden the right of a claimant to sue in admiralty. Prior to the enactment of the Admiralty Extension Act, admiralty tort jurisdiction was limited by the "locality" or "situs" rule. *See The Plymouth*, 70 U.S. (3 Wall.) 20 (1865); *Martin v.*

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[19] The Admiralty Extension Act, 46 U.S.C. § 740 provides:

> 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.

(Emphasis added).

West, 222 U.S. 191 (1911) (damage to bridge caused by vessel not in admiralty). Congress enacted the Admiralty Extension Act to extend admiralty jurisdiction to all cases where the injury caused by a vessel occurred or was consummated on land, essentially overruling the holding of *The Plymouth* and *Martin v. West*. *See Executive Jet*, 409 U.S. at 260. The Act is jurisdictional because it provides jurisdiction where none before existed. No other jurisdictional test is, therefore, needed as a predicate.

The Act was not intended, however, to apply only to the "ship-to-shore" collisions or other situations where the action of the vessel itself leads to the injury. *See J.W. Petersen Coal & Oil Co. v. United States*, 323 F. Supp. 1198 (N.D. Ill. 1970). Nothing in the legislative history of the Act limits its application to injuries actually caused by the physical agency of the vessel or a particular part of it. In *Gutierrez v. Waterman S.S. Corp.*, 373 U.S. 206, 209-10 (1963), this Court stated:

> There is no distinction in admiralty between torts committed by the ship itself and by the ship's personnel who are operating it, anymore than there is between torts committed by a corporation and by its employees. And ships are libeled as readily for an unduly bellicose mate's assault on a crewman . . . . or for having an incompetent crew or master . . . . as for collision.

(Citation omitted).

The only limitation placed on the application of the Act is that the land-based injury must be caused by a vessel on navigable water, a requirement identical to that argued here in Section I as the proper test. *See Boudloche v. Conoco Oil Corp.*, 615 F.2d 687 (5th Cir. 1980). Thus, the Act applies to confer admiralty jurisdiction in a wide range of situations, including when injury is caused by an allision

between a ship and a bridge;[20] the overflow of heating oil in harbor waters;[21] pollution damage;[22] and damage to an underwater gas main or pipeline.[23] The Act also extends to those cases where there is no actual physical impact by a vessel, but where the damage is proximately caused by the vessel or its master or crew, including when injury is caused to automobiles on a dock resulting from emissions from tied-up vessels;[24] shore damage due to the discharge of pollution from a vessel;[25] and economic loss incurred by a restaurant resulting from a ship's collision with a ferry.[26] *See also Loeber v. Bay Tankers, Inc.*, 924 F.2d 1340 (5th Cir.), *cert. denied*, 112 S. Ct. 78 (1991) (admiralty jurisdiction when a passing merchant vessel caused dock to surge and dislodge a ladder, injuring a person on the dock).

The party allegedly causing the land-based injury also has the right to bring an action under the court's admiralty

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[20] *Empire Seafoods, Inc. v. Anderson*, 398 F.2d 204 (5th Cir.), *cert. denied*, 393 U.S. 983 (1968).

[21] *In re New Jersey Barging & Corp.*, 168 F. Supp. 925, (S.D.N.Y 1958).

[22] *Louisiana ex rel Guste v. M/V Testbank*, 752 F.2d 1019, 1985 AMC 1521 (5th Cir. 1985), *cert. denied*, 477 U.S. 903 (1986).

[23] *Southern Natural Gas Co. v. Gulf Oil Corp.*, 320 So.2d 917 (La. Ct. App. 1975), *appeal denied*, 324 So.2d 812 (La. 1976); *Kaiser Aluminum & Chem. Corp. v. Marshland Dredging Co.*, 455 F.2d 957 (5th Cir. 1972).

[24] *Nissan Motor Corp. v. Maryland Shipbuilding & Drydock Co.*, 544 F. Supp. 1104, (D. Md. 1982), *aff'd without opinion*, 742 F.2d 1449 (4th Cir. 1984).

[25] *Parcel v. City Lumber Co.*, 1977 AMC 1704 (D. Conn. 1976).

[26] *Lynchburg Crossing, Inc. v. M/V City of Port of Allen*, 1982 AMC 2072 (Tex. App. 1980) (although admiralty jurisdiction existed, the case was dismissed on the ground that economic loss was not recoverable in admiralty.)

jurisdiction. The Act is not restricted in its application to use by the injured plaintiff. Nor is the Act limited with respect to the time or place of the injury. As noted earlier in this brief, there certainly can be imagined maritime accidents of tremendous force or sweeping effect that extend far inland, reaching numerous land-based parties. *See, e.g., In re Texas City Disaster Litigation, supra*, n. 16. The fact that such accidents may affect parties a significant distance from shore should not defeat application of the Extension Act.

IV.

THE LIMITATION OF LIABILITY ACT ALSO PROVIDES A SEPARATE BASIS FOR ADMIRALTY JURISDICTION.

An additional basis of maritime jurisdiction exists in this case through the Limitation of Liability Act, 46 U.S.C. § 183, *et seq.* ("Limitation Act"). Respondent properly raised this issue below, both in the District Court, which rejected the argument, and in the Seventh Circuit, which chose not to address the contention because it concluded 28 U.S.C. § 1333(1) adequately supported jurisdiction. *Great Lakes Dredge & Dock Co.*, 3 F.2d at 230 n. 8. This Court also chose not to address this issue in *Sisson*, 497 U.S. at 359 n. 1. The MLA urges the Court to resolve whether the Limitation Act does confer jurisdiction, as this will help to simplify the jurisdictional inquiry in future cases.

A. The Limitation Act Establishes A Basis Of Admiralty Jurisdiction Separate From Admiralty Jurisdiction In Tort.

Congress, by enacting 46 U.S.C. § 183, *et seq.* to enable vessel owners to limit their liability, supplemented the federal court's admiralty jurisdiction. Immediately after Congress first passed the Limitation Act in 1851, it was con-

sidered that the Act "embraced liabilities for maritime torts, but excluded both debts and liabilities for non-maritime torts." *Richardson v. Harmon*, 222 U.S. 96, (1911). In 1884, Congress amended the Act by adding § 189, which in part provides that "the individual liability of a shipowner shall be limited to the proportion of *any or all debts and liabilities* . . . ." 222 U.S. at 101 (Emphasis added).

Richardson was the first case in which this Court considered the meaning of § 189. The vessel owner in *Richardson* sought to limit the liability arising out of an allision between his vessel and the abutment of a railway drawbridge. At that time, admiralty courts had no jurisdiction in tort over damage communicated from ship-to-shore, and the district court accordingly dismissed the limitation petition for want of admiralty jurisdiction.

This Court reversed, holding that the 1884 amendment expanded the scope of the liabilities subject to limitation to include "all claims arising out of the conduct of the master and crew, *whether the liability be strictly maritime or from a tort non-maritime* . . . ." *Richardson*, 222 U.S. at 106 (Emphasis added). The claimant (bridge owner) argued that Congress' specification that limitation was open to "any and all debts and liabilities that his individual share of the vessel bears" was only meant to encompass obligations *ex contractu* and not non-maritime liabilities in tort. This Court rejected this argument, stating that "the addition of the words 'and liabilities' would be tautology unless meant to embrace liabilities not arising from 'debts.' " *Id.* at 104. According to this Court, "we therefore conclude that the section in question was intended to add to the enumerated claims of the old law 'any and all debts' not theretofore included." *Id.* at 106.

The conclusion is inescapable that because the right to limitation under § 189 does not depend on the *maritime*

nature of the liability, jurisdiction under the Limitation Act is not merely coextensive with the general admiralty jurisdiction in tort. According to this Court's interpretation of § 189, under *Richardson*, a federal court's admiralty jurisdiction in tort and its admiralty jurisdiction under the Act are necessarily two separate bases of admiralty jurisdiction, the latter extending jurisdiction *to any and all* liabilities arising out of the conduct of the vessel, even non-maritime. This point is emphasized by the fact that two weeks after this Court decided *Richardson*, it handed down *Martin v. West*, 222 U.S. 191 (1911), in which it held that there was no admiralty jurisdiction over a claim brought by a bridge owner against a shipowner whose vessel had collided with and damaged the claimant's bridge. Had the shipowner sought relief under the Limitation Act, however, jurisdiction would have existed.

B. *Richardson v. Harmon* Remains Good Precedent.

Richardson remains viable precedent because this Court has recognized throughout this century that the Act contains an independent, statutory grant of jurisdiction:

> In this case the statutes of the United States have enabled the owner to transfer its liability to a fund and to the exclusive jurisdiction of the admiralty, and it has done so. That fund is being distributed. In such circumstances *all claims to which the admiralty does not deny existence must be recognized, whether admiralty liens or not.*

THE HAMILTON, 207 U.S. 398, 406 (1907) (emphasis added).

> But this limitation of liability proceeding differs from the ordinary admiralty suit, in that by reason of the statute and rules, the court of admiralty has power (*Providence & N.Y.S.S. Co. v. Hill Mfg. Co.*, 109 U.S.

> 578, 27 L.Ed. 1038, 3 S.Ct. Rep. 379, 617) to do what is exceptional in a court of admiralty—to grant an injunction, *and by such injunction bring litigants, who do not have claims which are strictly admiralty claims, into the admiralty court* (Benedict, *Admiralty*, 5th ed. § 70, note 97).

Hartford Accident & Indemnity Co. v. Southern Pacific, 273 U.S. 207, 218 (1926) (Emphasis added). More recently, the Court reaffirmed that "the limitation extends to tort claims even where the tort is non-maritime." *Just v. Chambers*, 312 U.S. 383, 386 (1941).[27]

The precedents of this Court make clear that the Limitation Act is more than a mere procedural device and is broader than judicially developed parameters of maritime jurisdiction. There is admiralty jurisdiction under the Limitation Act if (1) the structure seeking the benefit of the Act is a vessel; (2) the liabilities exceed the value of the owner's interest in the vessel; (3) the person or entity seeking limitation is the owner of the vessel; and (4) there is more than one claimant. This case meets all of these prerequisites.

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[27] Following the lead of this Court, other cases have confirmed the jurisdiction of admiralty courts in limitation cases where the claims asserted were non-maritime. *THE ATLAS NO. 7*, 42 F.2d 480 (S.D.N.Y. 1930); *THE WICHITA FALLS*, 15 F. Supp. 612 (S.D. Tex. 1936); *Tracy Towing Line v. Jersey City*, 105 F. Supp. 910 (D.N.J. 1952); *The City of Bangor*, 13 F. Supp. 648 (D. Mass. 1936); *In Re Pennsylvania R. Co.*, 48 F.2d 559 (2d Cir.), *cert. denied*, 284 U.S. 640 (1931); *In Re Highland Nav. Corp.*, 24 F.2d 582 (S.D.N.Y. 1927); *THE NO. 6*, 241 F. 69 (2d Cir. 1917). *See also United States v. Matson Nav. Co.*, 201 F.2d 610 (9th Cir. 1953) ("The Supreme Court upheld the Act in *Richardson v. Harmon*, *supra*, even though it considered the Act as an extension of admiralty jurisdiction to theretofore non-maritime torts.").

C. *Executive Jet* Did Not Change The Jurisdictional Effect Of § 189 Of The Limitation Act.

The decision of this Court in *Executive Jet* establishing a "maritime nexus" test in addition to the traditional "situs" requirement for admiralty jurisdiction in tort did not change the meaning placed upon § 189 of the Limitation Act by the Court sixty years earlier in *Richardson v. Harmon*. The Court's sole concern in *Executive Jet* was the scope of a federal court's admiralty jurisdiction in tort under 28 U.S.C. § 1333(1). 409 U.S. 249, 251 (1972).

The rule formulated by the Supreme Court in *Executive Jet* affects the rule of *Richardson* only if *Richardson* was a case which decided some aspect of admiralty jurisdiction over a maritime tort. On the contrary, *Richardson* expressly held that Congress intended the Limitation Act to apply to maritime *and non-maritime torts*. 222 U.S. at 106. *Richardson* did not hold that § 189 of the Act effectively expanded admiralty jurisdiction *in tort* to cover injuries which originated on navigable waters but were consummated on land. Rather, the *Richardson* Court construed the Act itself as providing a separate source of admiralty jurisdiction which defendant shipowners might invoke irrespective of the maritime nature of the liability sought to be limited.

Moreover, *Executive Jet* did not propound jurisdictional prerequisites for all species of admiralty jurisdiction. First, it was limited to an aviation accident. Second, the Court expressly held that "*in the absence of legislation to the contrary*, there is no federal admiralty jurisdiction over aviation tort claims arising from flights by land-based aircraft between points within the continental United States." 409 U.S. at 274. (Emphasis added). Clearly, the Court recognized that its new test did not apply to Congressional legislation which conferred additional jurisdiction in admiralty.

CONCLUSION

The MLA urges this Court to adopt a modified "situs" test for admiralty tort jurisdiction covering all torts which (1) occur on navigable waters and (2) which occur on or are caused by a vessel. Only by adopting this test can the Court end the undeniable confusion which presently characterizes maritime jurisdictional inquiries by the lower courts, where little or none existed before. This test is in keeping with the constitutional grant of admiralty and maritime jurisdiction to the federal courts, which must be given the broadest interpretation to affect its purpose of providing a uniform set of laws for the use of navigable waters by vessels. In their confusion, the lower courts have lost sight of this purpose.

The proposed "situs" test is also consonant with Congress' consistent expansion of the admiralty jurisdiction in amending the Limitation of Liability Act to cover maritime and non-maritime liabilities, and in passing the Admiralty Extension Act, overruling *The Plymouth* and *Martin v. West*. If a vessel is not involved in an incident, then admiralty jurisdiction should be determined through a modified *Sisson* test which assesses (1) whether the wrong occurred upon navigable waters and (2) whether the incident posed a hazard to use of navigable waters.

Jurisdiction exists in this case under the old "situs" test, the modified "situs" test, the *Sisson* test, the Admiralty Extension Act, and the Limitation of Liability Act. If this case is not within admiralty jurisdiction, no case should be. The activity of the vessel resulted in *closure* of a navigable waterway, the free passage of which is the very essence of the maritime interest.

For all of the foregoing reasons, the decision of the Seventh Circuit should be affirmed.

Respectfully submitted,

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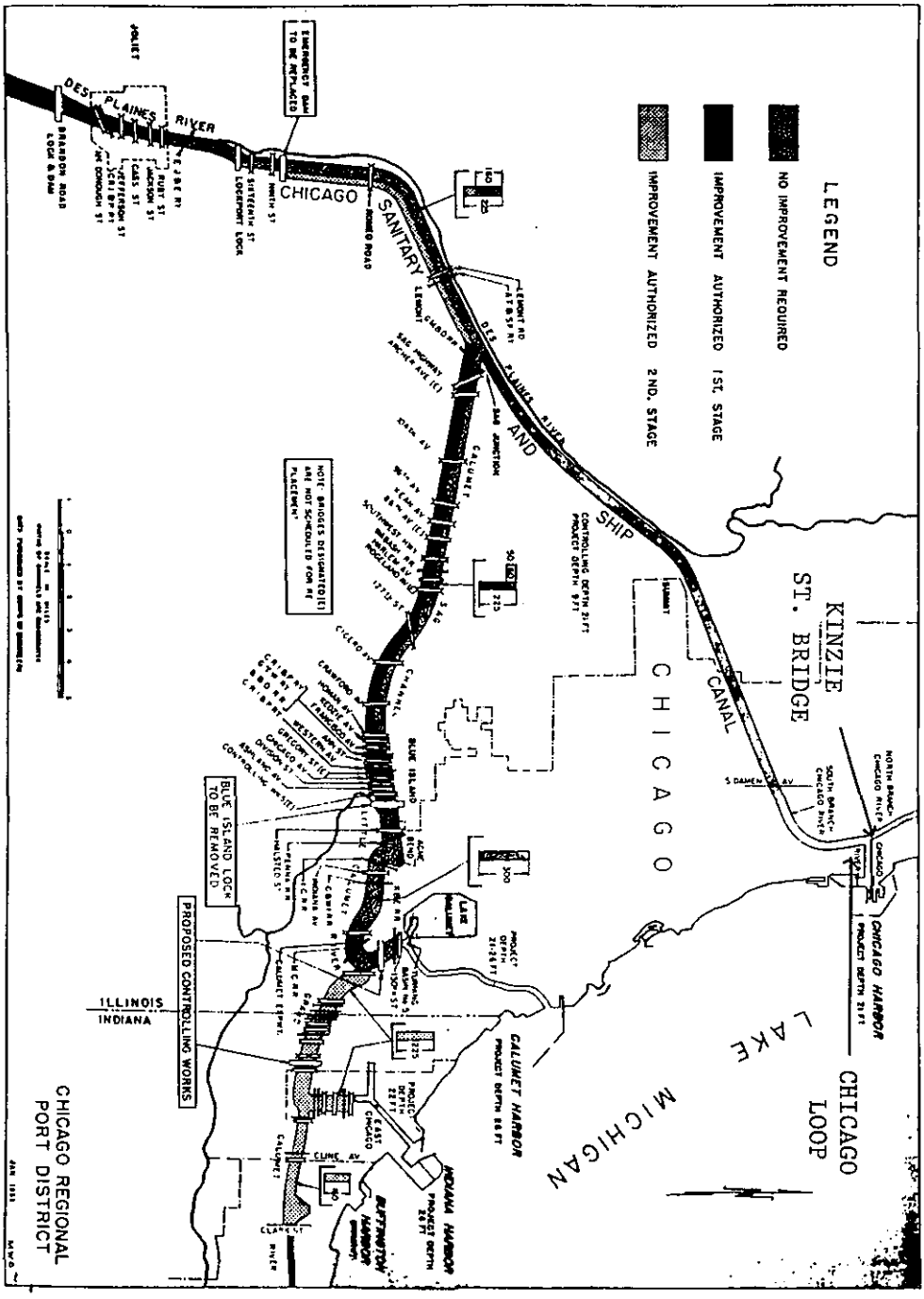
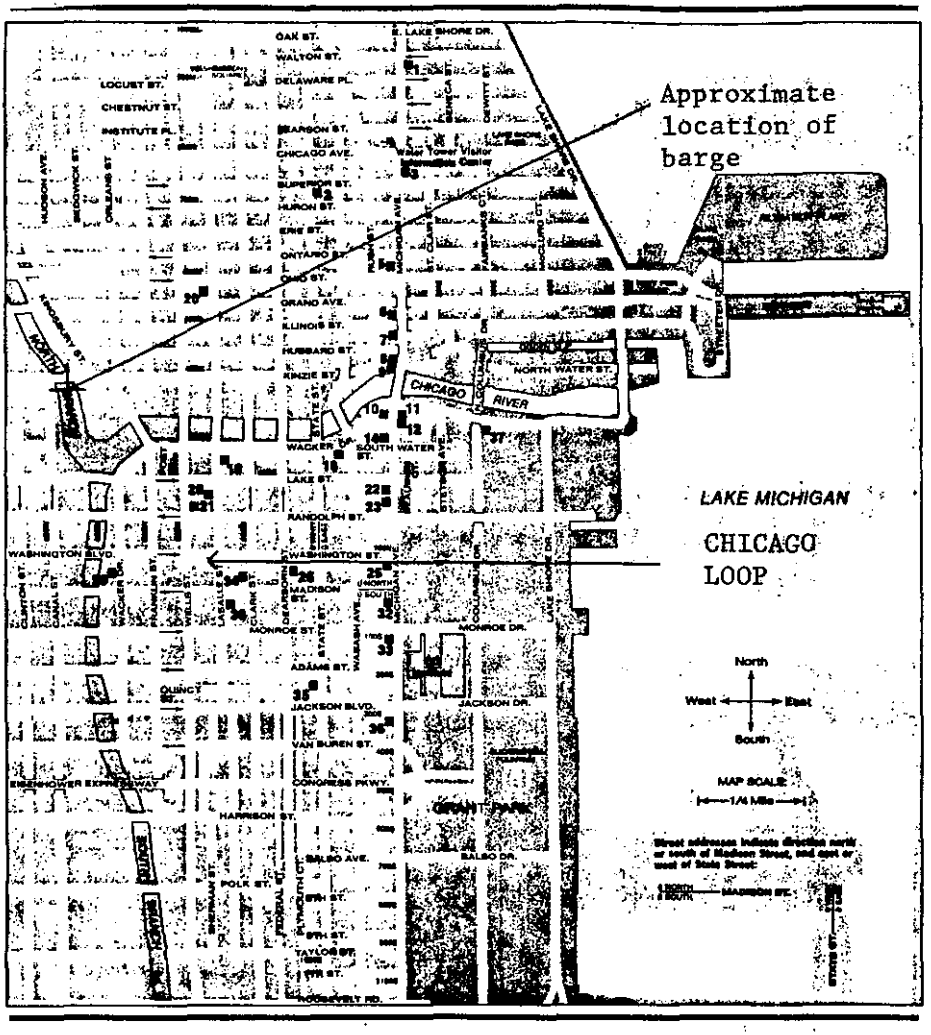


APPENDIX A — p. 1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