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## Moore v. Phillips Petroleum Co. United States Court of Appeals, Fifth Circuit, 21 September 1990. 912 F.2d 789

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## MOORE V. PHILLIPS PETROLEUM CO.

United States Court of Appeals, Fifth Circuit, 21 September 1990.  
912 F.2d 789

**A time charterer is not responsible for injuries sustained by a debarking passenger despite actual or constructive knowledge that a hazardous condition exists.**

**FACTS:** Appellant Mack J. Moore (Moore) was a production worker employed by ODECO Oil and Gas Co. (ODECO). ODECO and Phillips Petroleum Co. (Phillips) owned an unmanned fixed platform located on the Outer Continental Shelf off the coast of Louisiana. ODECO entered into a time charter agreement for the vessel M/V C-DICTATOR (DICTATOR) with the vessel owner, Co-Mar Offshore Marine Co. (Co-Mar). Moore was transported aboard the Dictator to the fixed platform. To reach the platform, Moore swung from a rope attached to a beam extending from the top deck of the platform. The rope broke and Moore suffered a shoulder injury. This method of debarkation is normally used.

ODECO, as Moore's employer, paid Moore worker's compensation. Moore then sued ODECO under the Longshore and Harbor Workers' Compensation Act, 35 U.S.C. §905(b) (LHWCA), alleging that ODECO as time charterer knew that the rope was rotten, thereby breaching the duty of due care owed to him as a passenger.

**ISSUE:** Is a time charterer liable to a passenger under the LHWCA when the debarking passenger is injured due to a hazardous condition of which the time charterer has actual or constructive knowledge?

**ANALYSIS:** The Court of Appeals for the Fifth Circuit established that the LHWCA is applicable because the platform in question lies on the Outer Continental Shelf. The court stated that under §5(b) a covered person who is caused injury by the negligence of a vessel may bring an action against the vessel as a third party. 33 U.S.C. §905(b). The court had previously held that an injured worker has standing to sue the time charterer when the time charterer is also his employer.

The court went on to state that appellant must first establish that a duty of due care was owed to him by ODECO acting as the time charterer, because as an employer, ODECO is only obligated to pay an employee worker's compensation when that employee is injured. The

court further found that since no express agreement was created to further extend the traditional sphere of control and responsibility of a time charterer, it could only hold ODECO liable under §5(b) if the duty breached lay within the traditional control of a time charterer.

The court noted that a time charterer is responsible for the routes it chooses to follow, the cargo it chooses to store and its destination, while the vessel owner remains liable for the ship's seaworthiness, the crew's negligence and the safety of its embarkation/debarkation system for passengers. Therefore, the court found that either Co-Mar, as vessel owner, or ODECO, as the employer, were responsible for Moore's unsafe debarkation. The court stated that ODECO, as employer, controlled the physical condition of the rope and could be charged with knowledge of its impairment. The court further found that ODECO is liable under worker's compensation, which it was already paying to the appellant. On the other hand, the Fifth Circuit found Co-Mar to be responsible for the safe debarkation of passengers. The court found that in either event, the responsibility for safe debarkation is not a traditional responsibility of a time charterer under 5(b) and that no cause had been shown to warrant an extension of the traditional duties as noted.

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## SISSON V. RUBY

United States Supreme Court, June 25, 1990  
110 S. CT. 2892 (1990 WL 84059)

**A fire on board a pleasure yacht docked at a marina, on "navigable waters," which causes damage to neighboring pleasure craft and the marina, is a "potential hazard to maritime commerce arising out of an activity that bears a substantial relationship to traditional maritime activity" and therefore, admiralty jurisdiction is appropriate under 28 U.S.C. §1331(1).**

**FACTS:** Everett Sisson owned the Ultorian, a 56 foot pleasure yacht. On September 24, 1985, while the Ultorian was docked at a marina on Lake Michigan, a navigable waterway, a fire erupted in the vessel's washer/dryer unit. The fire destroyed the Ultorian and damaged several neighboring vessels and the marina. The owners of the neighboring vessels and the marina filed claims against Sisson for over \$275,000 in damages. Invoking the Limitation of Liability Act 46 U.S.C. §183(a), Sisson filed a petition for declaratory and injunctive relief in federal district court to limit his liability to \$800, the salvage value of the Ultorian after the fire. Sisson argued that the federal court had maritime jurisdiction over his limitation of liability action under 28 U.S.C. §1331(1). The district court disagreed, and dismissed the petition for lack of subject-matter jurisdiction. Sisson sought reconsideration on the ground that the Limitation of Liability Act independently conferred jurisdiction over the action. The district court denied Sisson's motion. The Court of Appeals for the Seventh Circuit affirmed, holding that neither 1331(1) nor the Limitation of Liability Act conferred jurisdiction. The Supreme Court granted certiorari.

**ISSUES:** 1) Whether a limitation of liability suit brought in connection with a fire on board a pleasure yacht docked at a marina on navigable waters falls within the admiralty jurisdiction of the federal courts. 2) Whether the Limitation of Liability Act 46 U.S.C. §183(a) independently confers admiralty jurisdiction over the suit.

**ANALYSIS:** The United States Supreme Court held that a fire on board a pleasure vessel docked at a marina, on navigable waters, which causes damage to neighboring pleasure vessels and the marina, was within the admiralty jurisdiction of the federal district court. Prior to the decision of this case, admiralty jurisdiction, under 28 U.S.C. §1331(1), was proper if the incident at issue: 1) occurred on navigable waters and 2) bore a significant relation to traditional maritime activities. *Executive Jet Aviation v. City of Cleveland*, 409 U.S. 249, 266 (1972). In deciding the case at bar, the Supreme Court expanded upon the two part test in order to clarify the scope of admiralty jurisdiction. The Court began its opinion by reviewing the development of the jurisdictional test. Prior to the decision in *Executive Jet*, admiralty jurisdiction was determined largely by the application of the "locali-