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Admiralty

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I. INTRODUCTION

The United States Supreme Court and Eleventh Circuit Court of Appeals were busy in 2007 with admiralty cases and other matters of importance to maritime practitioners. The Supreme Court considered two punitive damages cases with maritime implications and reviewed a case under the Federal Employers' Liability Act[1] with potential bearing on Jones Act[2] jurisprudence. The Supreme Court also clarified an important procedural issue concerning the application of the forum non conveniens doctrine, which often arises in maritime cases. The Eleventh Circuit continued its trend of tackling important maritime questions by issuing opinions on (1) the interplay between the Seaman's Wage Act[3] and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards,[4] (2) the recoverability of punitive damages in Jones Act cases, and (3) the burden of proof in allision cases.

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1. 45 U.S.C. §§ 51-60 (2000).
2. 46 U.S.C. app. § 688 (2000).
3. 46 U.S.C. § 10313 (2000).
4. June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38.

II. UNITED STATES SUPREME COURT CASES

A. Punitive Damages and Due Process

Exxon Mobil Corp. v. Grefer[5] involved the contamination of property owned by the Grefers and leased to an oil and oil pipe company.[6] Exxon was among the defendants sued by the Grefers for damages after they discovered radium on their land. The plaintiffs sued under theories of negligence, strict liability, absolute liability, nuisance, and fraud and sought compensatory and punitive damages for loss of use and remediation of the property. The case was initiated in 1997 in civil trial court in Louisiana and was subsequently amended and affirmed on appeal.[7] The United States Supreme Court granted certiorari.[8]

The Grefers leased their thirty-three-acre property to a company known as Intracoastal Tubular Services, Inc. ("ITCO"), who cleaned oil pipelines for Exxon. The property owners learned after the end of the lease that the land was contaminated with radium and sued ITCO, Exxon's main cleaning contractor, and Exxon, among others. At trial, the district court in Orleans Parish awarded the Grefers over $56 million in compensatory damages and $1 billion in punitive damages, to be paid by Exxon, for the harm done to their property.[9]

Exxon and the Grefers appealed.[10] The Louisiana Court of Appeal for the Fourth Circuit reduced the punitive damages award to twice the compensatory damage amount to comply with the Due Process Clause of the Fourteenth Amendment,[11] but otherwise the court of appeal affirmed the lower court's holding.[12] Exxon filed many assignments of error on appeal, but only the lack of due process claim succeeded.[13]

The appellate court rejected Exxon's argument that the $56 million in restoration damages was unreasonable, deferring to the trier of fact for the determination of damages, despite the fact that the tract of land was valued at $1.5 million.[14] The appellate court upheld the restoration

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5. 127 S. Ct. 1371 (2007).
6. Grefer v. Alpha Technical, 901 So. 2d 1117, 1123 (La. Ct. App. 2005).
7. *Id.* at 1127-28.
8. *Grefer*, 127 S. Ct. at 1371.
9. *Grefer*, 901 So. 2d at 1127-28.
10. *Id.* at 1129.
11. U.S. CONST. amend. XIV, § 1.
12. *Grefer*, 901 So. 2d at 1142, 1152. The compensatory damage award was $56,145,000, so the punitive damage award was reduced from $1,000,000,000 to $112,290,000. *Id.* at 1152.
13. *Id.* at 1129, 1154.
14. *Id.* at 1141.

damages.[15] The court then cited evidence of the defendants' wanton or reckless conduct, such as the continued health and environmental hazards they caused between 1985 and 1992 and their failure to warn the public or make efforts to remedy the hazards.[16] Although the appellate court was willing to uphold an award for punitive damages, it held that the amount of the award, $1 billion, was unconstitutional because it was exceedingly disproportionate to the $56 million compensatory award.[17] The appellate court concluded that a lesser, single-digit ratio between the compensatory and punitive awards would be appropriate and decreased the punitive award to $112,290,000.[18]

Exxon appealed the appellate court's decision to the United States Supreme Court.[19] The Supreme Court granted the petition for certiorari and vacated the judgment of the Louisiana Court of Appeal and remanded it for consideration in light of *Philip Morris USA v. Williams*.[20]

B. Punitive Damages and Harm to Nonparties

The question of whose injury may be assessed in determining punitive damage awards was addressed by the United States Supreme Court in *Philip Morris USA v. Williams*.[21] This case arose when the representative of Jesse Williams's estate brought suit for negligence and deceit against the manufacturer of cigarettes the decedent smoked. The estate claimed the manufacturer downplayed the reality of the dangers of smoking and thus contributed to the decedent's death.[22]

The jury awarded the Williams family $821,000 in compensatory damages and $79.5 million in punitive damages to be paid by Philip Morris. The trial court reduced the large award of punitive damages, but the state appellate court reinstated the jury's verdict. The Oregon Supreme Court upheld the punitive damage award, which was partially based on harm to nonparties to the litigation. The United States Supreme Court granted Philip Morris' petition for certiorari to address its contention that the punitive damage award was grossly excessive and impermissibly included a consideration of harm to nonparties.[23]

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15. *Id.* at 1142.
16. *Id.* at 1145-47.
17. *Id.* at 1149-50, 1152.
18. *Id.*
19. *Grefer*, 127 S. Ct. at 1371.
20. *Id.*; 127 S. Ct. 1057 (2007).
21. 127 S. Ct. 1057 (2007).
22. *Id.* at 1060-61.
23. *Id.* at 1061-62.

The United States Supreme Court held that although harm to nonparties could be considered in assessing the reprehensibility of the defendant's conduct for purposes of punitive damages, the punitive award cannot be based on the jury's desire to punish the defendant for harming people not parties to the litigation at hand.[24] The Court held that such an award was a taking of property without due process because a defendant would not be able to adequately defend itself against a claim of injury to a nonparty.[25]

The Court in *Philip Morris* did not address the allegation that the award was grossly excessive and instead vacated the punitive damage judgment and remanded the case for reconsideration based on due process considerations.[26] The Court concluded that punitive damage awards cannot be used to punish a defendant for harming nonparties because too much would be left to jury speculation.[27] Potential harm can only be considered when it is potential harm to the plaintiff.[28] If a court permits a jury to consider harm to others, it cannot uphold a punitive damage award based solely on that premise.[29] The case was remanded to the Oregon Supreme Court to apply the correct constitutional standard, which may lead to either a new trial or a reduction of damages.[30]

Justice Stevens argued in his dissent that the harm to nonparties is a relevant factor in assessing reprehensibility in civil court punitive damage awards.[31] Justice Stevens classified punitive damages as "a sanction for the public harm the defendant's conduct has caused or threatened."[32]

C. Standard of Causation Under the Federal Employers' Liability Act

The Federal Employers' Liability Act ("FELA")[33] is a statutory scheme governing railroads' liability to their employees for injuries

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24. *Id.* at 1065.
25. *Id.* at 1060, 1063.
26. *Id.* at 1065.
27. *Id.* at 1063.
28. *Id.*
29. *Id.* at 1064.
30. *Id.* at 1065.
31. *Id.* at 1066 (Stevens, J., dissenting).
32. *Id.* In an interesting alignment of forces, Justices Thomas and Scalia joined Justice Ginsburg in dissent. *Id.* at 1067 (Ginsberg, J., dissenting). Justice Stevens dissented separately. *Id.* at 1065 (Stevens, J., dissenting).
33. 45 U.S.C. §§ 51-60 (2000).

resulting in whole or in part from the railroad's negligence.[34] An employee's contributory negligence is not a bar to recovery under FELA, but the employee's recovery is reduced in proportion to his or her contributory negligence.[35] In *Norfolk Southern Railway Co. v. Sorrell*,[36] Timothy Sorrell sued his employer, Norfolk Southern Railway Co., in Missouri state court under FELA. Sorrell sustained neck and back injuries while working as a trackman when his dump truck veered off the road and tipped over. The cause of the accident was disputed, and Sorrell claimed it was due to the employer railroad company's negligence. Sorrell's employer responded that Sorrell's own negligence caused the accident and resulting injuries.[37]

Missouri's jury instructions for FELA liability call for one standard of causation to be applied to employer negligence and another to employee contributory negligence.[38] The instructions provide that a jury must "find an employee contributorily negligent if the employee was negligent and his negligence 'directly contributed to cause' the injury."[39] On the other hand, per these instructions, railroad negligence will be found "if the railroad was negligent and its negligence contributed 'in whole or in part' to the injury."[40] The Missouri state court instructed the jury according to these standards, over the employer's objection, and the jury found for Sorrell, awarding $1.5 million in damages. The Missouri Court of Appeals for the Eastern District affirmed, and the Missouri Supreme Court denied discretionary review.[41]

The United States Supreme Court granted the railroad's petition for certiorari and vacated the judgment awarding $1.5 million to Sorrell.[42] The railroad's primary argument on appeal was the variation in standards for contributory negligence of the employee as opposed to negligence of the employer. In arguing for a single standard, Norfolk Southern pointed out that Missouri is the only state that advocates this divergent standard, and at common law, the causation standards for negligence and contributory negligence are the same.[43] The Supreme Court gave great weight to the common law in its analysis and found "no

34. *Id.*
35. *Id.* § 53.
36. 127 S. Ct. 799 (2007). This case is reviewed in this Article on Admiralty law due to the historical similarity between FELA and the Jones Act.
37. *Id.* at 802.
38. *Id.*
39. *Id.* at 802-03.
40. *Id.* at 803.
41. *Id.*
42. *Id.* at 803, 809.
43. *Id.* at 803, 805-06.

basis for concluding that Congress in FELA meant to allow disparate causation standards."[44]

Sorrell argued that even if the instructions improperly contained different causation standards, the error was harmless and the verdict should be upheld.[45] The United States Supreme Court refused to make this decision and remanded the case to the Missouri Court of Appeals to decide whether a new trial would be necessary.[46]

D. Threshold Jurisdiction and Forum Non Conveniens

In *Sinochem International Co. v. Malaysia International Shipping Corp.*,[47] the United States Supreme Court addressed a jurisdictional question to resolve a split among the circuits. A Pennsylvania district court dismissed a case on forum non conveniens grounds without first addressing potential subject matter or personal jurisdiction objections, and Malaysia International, the original plaintiff, challenged the permissibility of the dismissal. The United States Court of Appeals for the Third Circuit reversed, holding that a district court must first determine that it has both subject matter and personal jurisdiction to entertain a case before it can grant a dismissal on forum non conveniens grounds.[48] The United States Supreme Court granted certiorari to resolve the issue.[49]

Sinochem International Co. ("Sinochem") was a Chinese importer who arranged to purchase steel coils from a United States manufacturer. The manufacturer arranged for a vessel owned by Malaysia International to transport the coils from Philadelphia to China. Once in China, a bill of lading triggered immediate payment. Sinochem then petitioned a Chinese admiralty court to arrest the vessel, claiming that Malaysia International had falsely backdated the bill of lading.[50]

When Sinochem's complaint was dismissed in a Chinese court, Malaysia International initiated this Pennsylvania suit against Sinochem for Sinochem's misrepresentations and the damages that arose from the ship's arrest in China. Sinochem moved to dismiss on multiple grounds, including lack of jurisdiction and forum non conveniens. The District Court for the Eastern District of Pennsylvania dismissed the suit under the doctrine of forum non conveniens because the underlying

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44. *Id.* at 806.
45. *Id.* at 809.
46. *Id.*
47. 127 S. Ct. 1184 (2007).
48. *Id.* at 1189.
49. *Id.* at 1189-90.
50. *Id.* at 1188.

controversy concerned alleged misrepresentations by a Chinese corporation to a Chinese admiralty court resulting in the arrest of a Malaysian ship in China. In turn, the Third Circuit reversed the dismissal, holding that the case could not be dismissed on forum non conveniens grounds until the court deciding the case had both personal jurisdiction and subject matter jurisdiction over the defendant.[51]

The Supreme Court granted certiorari and reversed the decision of the appellate court, thus reinstating the district court's holding that permitted the dismissal of a suit on forum non conveniens grounds when considerations of convenience, fairness, and judicial economy warrant dismissal *prior to* addressing any jurisdictional issues.[52] The Court limited to its particular facts the holding of *Gulf Oil Corp. v. Gilbert*,[53] which held that the forum non conveniens doctrine does not apply if there is an absence of jurisdiction (in other words, when the jurisdictional question has been addressed and the court in which the case is brought is definitively without jurisdiction), and the Court refused to extend that holding to *Sinochem*.[54]

The Supreme Court stated that *Sinochem* is a "textbook case for immediate *forum non conveniens* dismissal . . . [and d]iscovery concerning personal jurisdiction would have burdened Sinochem with expense and delay."[55] In reversing and remanding to the lower court, the Supreme Court concluded that the lower court need not resolve whether it has the authority to adjudicate the action if it determines that a foreign tribunal is plainly a more suitable forum.[56]

III. ELEVENTH CIRCUIT CASES

A. Interaction Between the Seaman's Wage Act and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards

In *Lobo v. Celebrity Cruises, Inc.*,[57] the Eleventh Circuit addressed the question of whether the Seaman's Wage Act,[58] which gives seamen the right to access federal courts in order to resolve wage disputes, supersedes the Convention on the Recognition and Enforcement of

51. *Id.* at 1189.
52. *Id.* at 1192.
53. 330 U.S. 501 (1947).
54. *Sinochem*, 127 S. Ct. at 1193 (quoting *Gulf Oil*, 330 U.S. at 504).
55. *Id.* at 1194.
56. *Id.*
57. 488 F.3d 891 (11th Cir. 2007).
58. 46 U.S.C. § 10313 (2000).

Foreign Arbitral Awards (the "Convention").[59] In *Lobo* a cruise ship employee sued his employer, Celebrity Cruises, Inc., claiming that he was forced to pay part of his earnings to his assistants, contrary to his collective bargaining agreement with Celebrity Cruises. He further argued that the arbitration clause in his collective bargaining agreement violated the Seaman's Wage Act.[60]

Inacio Lobo was paired with an assistant to clean each passenger cabin, and he was required to pay that assistant $1.20 per passenger per day from his gratuities. Lobo sued Celebrity Cruises in federal court under the Seaman's Wage Act, claiming that under his collective bargaining agreement, passenger gratuities are included as part of his pay as a stateroom attendant.[61]

Celebrity Cruises moved to dismiss Lobo's claims, arguing that the case did not belong in federal court because the Convention compelled enforcement of the employees' collective bargaining agreement, which required arbitration. The United States District Court for the Southern District of Florida agreed and dismissed Lobo's claim against his employer.[62] On appeal, the Eleventh Circuit affirmed the district court's dismissal and held that the Convention required enforcement of the collective bargaining agreement's arbitration clause.[63]

Both the district court and the Eleventh Circuit concluded that Lobo's reliance on *U.S. Bulk Carriers, Inc. v. Arguelles*[64] was misplaced.[65] In *Lobo* the United States Supreme Court interpreted *Arguelles* as holding that the Seaman's Wage Act supersedes the Labor Management Relations Act,[66] which "'provides a federal remedy to enforce grievance and arbitration provisions of collective-bargaining agreements'" in commercial contracts.[67] Therefore, Lobo argued that the Seaman's Wage Act should supersede the Convention, and he should therefore be entitled to sue in federal court rather than submit to arbitration.[68] The Eleventh Circuit held that Lobo's reliance on *Arguelles* was mislaid because both the briefing and the oral argument in *Arguelles* occurred prior to the implementation of the Convention;[69] therefore, the Supreme

59. June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38.
60. *Lobo*, 488 F.3d at 893.
61. *Id.*
62. *Id.* at 893-94.
63. *Id.* at 896.
64. 400 U.S. 351 (1971).
65. *Lobo*, 488 F.3d at 894.
66. Labor Management Relations (Taft-Hartley) Act § 301(a), 29 U.S.C. § 185(a) (2000).
67. *Lobo*, 488 F.3d at 894 (quoting *Arguelles*, 400 U.S. at 352).
68. *Id.* at 894.
69. *Id.* The Convention was implemented on December 29, 1970. *Id.*

Court in *Arguelles* did not address the relationship between the Seaman's Wage Act and the Convention.[70] In *Lobo* the Eleventh Circuit refused "'to read industry-specific exceptions into the broad language of the Convention Act'" and concluded that the Convention obligated the United States to abide by the international treaty requiring states to recognize and enforce international arbitration agreements.[71]

B. Jones Act and Punitive Damages

The Eleventh Circuit examined whether punitive damages may be recovered in maintenance and cure actions in *Atlantic Sounding Co. v. Townsend*.[72] Townsend, a seaman and crew member of the Motor Tug Thomas, allegedly slipped and landed shoulder first on the steel deck of the vessel, injuring his shoulder and clavicle. Townsend alleged that his employer, Atlantic Sounding, advised him that it would not provide maintenance and cure.[73] Atlantic Sounding filed suit for declaratory relief on the question of its obligations. Two days later, Townsend filed a separate suit against Atlantic Sounding under the Jones Act[74] and general maritime law, alleging negligence, unseaworthiness, arbitrary and willful failure to pay maintenance and cure, and wrongful termination. He then filed the same claims as counterclaims to the declaratory judgment action and sought punitive damages on his maintenance and cure claim.[75]

The district court consolidated the two actions, and Atlantic Sounding moved to strike or to dismiss Townsend's request for punitive damages. Atlantic Sounding contended that under the United States Supreme Court's holding in *Miles v. Apex Marine Corp.*,[76] neither the Jones Act nor general maritime law provided a cause of action against an employer for nonpecuniary damages. The district court denied Atlantic Sounding's motion, concluding that it was bound by the Eleventh Circuit's prior ruling in *Hines v. J.A. LaPorte, Inc.*,[77] which permitted the award of punitive damages. Interlocutory appeal to the Eleventh Circuit was then granted.[78]

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70. *Id.* at 895.

71. *Id.* (quoting Bautista v. Star Cruises, 396 F.3d 1289, 1299 (11th Cir. 2005)).

72. 496 F.3d 1282, 1284 (11th Cir. 2007).

73. *Id.* at 1283. Maintenance and cure covers medical care, a living allowance, and wages for seamen who become ill or are injured while serving aboard a vessel. *Id.*

74. 46 U.S.C. app. § 688 (2000).

75. *Atl. Sounding Co.*, 496 F.3d at 1283-84.

76. 498 U.S. 19 (1990).

77. 820 F.2d 1187 (11th Cir. 1987).

78. *Atl. Sounding Co.*, 496 F.3d at 1283-84.

On appeal, the Eleventh Circuit examined whether it could depart from its prior ruling in *Hines*, based on the Supreme Court's intervening decision in *Miles*.[79] The Eleventh Circuit first discussed the "prior panel precedent rule," which provides that "a later panel may depart from an earlier panel's decision only when the intervening Supreme Court decision is 'clearly on point.'"[80] In *Hines* a panel of the Eleventh Circuit had "determined that, in an action for maintenance and cure, 'both reasonable attorney's fees and punitive damages may be legally awarded in a proper case'—that is, upon a showing of a shipowner's willful and arbitrary refusal to pay maintenance and cure."[81] The Eleventh Circuit noted that "in *Miles*, the Supreme Court 'conclude[d] that there is no recovery for *loss of society* in a general maritime action for the wrongful death of a Jones Act seaman.'"[82]

Atlantic Sounding argued that the uniformity principle in *Miles* "dictates that all subsequent courts determining the availability of damages in a maritime case must provide for uniform results in similar factual settings, regardless of whether the action is brought pursuant to the Jones Act, [the Death on the High Seas Act] or general maritime law."[83] Atlantic Sounding reasoned that, under this principle, Townsend could not recover punitive damages for a maintenance and cure cause of action "because he would not be able to recover punitive damages—which are non-pecuniary in nature—under the Jones Act."[84] The Eleventh Circuit explained that Atlantic Sounding's argument could "only be based on the reasoning of the *Miles* opinion, not on the *Miles* decision: its holding. *Miles* says and—more important—decides nothing about maintenance and cure actions or punitive damages."[85] Accordingly, the Eleventh Circuit held that *Miles* provided no basis to depart from *Hines* under the prior panel precedent rule and affirmed the lower court's denial of Atlantic Sounding's motion to strike Townsend's request for punitive damages.[86]

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79. *Id.* at 1284.

80. *Id.* (quoting Garrett v. Univ. of Ala. at Birmingham Bd. of Trs., 344 F.3d 1288, 1292 (11th Cir. 2003)).

81. *Id.* (quoting *Hines*, 820 F.2d at 1189).

82. *Id.* at 1285 (emphasis added) (brackets in original) (quoting *Miles*, 498 U.S. at 33).

83. *Id.* (internal quotation marks omitted).

84. *Id.*

85. *Id.* at 1285-86.

86. *Id.* at 1286.

C. *Burden of Proof in Allision Cases*

In *Fischer v. S/Y Neraida*,[87] the Eleventh Circuit clarified several somewhat murky questions concerning the burden of proof in allision cases. The Neraida was a sailing yacht anchored in Lake Worth in 2004 when Tropical Storm Frances approached, gained steam, and eventually made landfall as Hurricane Frances. The owner of Neraida dispatched the yacht's caretaker, Gregory Afthinos, and a companion, Steven Cienkowski, to prepare the yacht for the approaching storm. Over the course of thirty minutes of preparation time, Cienkowski[88] tied and secured the Neraida's sails to the masts[89] and dropped the yacht's self-setting, secondary anchor.[90]

After sustaining gusts of hurricane-force winds for six to eight hours, the Neraida lost several sails and was set adrift, eventually coming to rest against a dock owned by David Fischer. Mr. Fischer brought suit in the United States District Court for the Southern District of Florida against the yacht and its owner, Neraida Co., LP, claiming that his dock had sustained damages from the impact of the yacht as a result of a negligent failure to secure the yacht prior to the hurricane.[91] The trial consisted mainly of expert testimony on the reasonableness of the pre-hurricane preparations. The district court found that the measures used to secure the vessel were in fact reasonable, and therefore, under 46 U.S.C.A. § 30505,[92] the vessel and its owner were entitled to exoneration from liability.[93]

On appeal to the Eleventh Circuit, Fischer argued that the trial court had applied an improper burden of proof and committed clear error in deciding that the preparations were reasonable.[94] As support for its first contention, Fischer pointed to language in a "single ambiguous sentence" of the trial court's conclusions of law: "'[b]ecause Plaintiffs have failed to prove that Defendants were negligent in their hurricane preparations with regard to the S/Y Neraida, they are not entitled to

87. 508 F.3d 586 (11th Cir. 2007).

88. *Id.* at 589-90. Due to "scheduling conflicts," Mr. Afthinos was unable to accompany Mr. Cienkowski to undertake the requested preparations of the yacht for the approaching storm. *Id.* at 590.

89. *Id.* at 590. The sails were not removed due to the presence of heavy winds in the area. *Id.*

90. *Id.*

91. *Id.* at 591. In a separate action, the yacht owner sued for exoneration or limitation of liability. *Id.*

92. 46 U.S.C.A. § 30505 (West 2007).

93. *Fischer*, 508 F.3d at 591-92.

94. *Id.* at 592.

recover.'"[95] Under the burden-shifting rule developed in *The Louisiana*,[96] *The Oregon*,[97] and their progeny,[98] a moving vessel that strikes a stationary object is presumed to be at fault.[99] An allision defendant can rebut this presumption by affirmatively proving that (1) the allision was the stationary object's fault, (2) the moving vessel acted with reasonable care, or (3) the allision was inadvertent and unavoidable.[100]

The Eleventh Circuit initially noted that the district court had correctly shifted the burden of proof to the defendant, despite the ambiguity of the one sentence cited by Fischer.[101] The Eleventh Circuit then shifted its attention to the proper standard to apply to the proof offered in support of a defendant vessel's argument that it had acted with reasonable care.[102] Noting that "'[t]he highest degree of caution that can be used is not required,'"[103] the Eleventh Circuit concluded that reasonable care in the context of hurricane preparations amounts to "whether the owner 'use[d] all reasonable means and took proper action to guard against, prevent or mitigate the dangers posed by the hurricane.'"[104] The Eleventh Circuit held that the record contained substantial evidence to support the trial court's finding of the reasonableness of the vessel's efforts under the circumstances and affirmed the district court's judgment in favor of the vessel.[105]

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95. *Id.* (brackets in original) (quoting Fischer v. S/Y Neraida, No. 04-81131-CIVRYSKAM, 2005 WL 3991039, at *3 (Bankr. S.D. Fla. Dec. 16, 2005)).

96. 70 U.S. 164 (1865).

97. 158 U.S. 186 (1895).

98. *See, e.g.*, Bunge Corp. v. Freeport Marine Repair, Inc., 240 F.3d 919, 923 (11th Cir. 2001).

99. *Fischer*, 508 F.3d at 592 (citing *Bunge Corp.*, 240 F.3d at 923).

100. *Id.* at 593 (citing *Bunge Corp.*, 240 F.3d at 923).

101. *Id.* at 592-93.

102. *Id.* at 593.

103. *Id.* at 594 (brackets in original) (quoting The Grace Girdler, 74 U.S. 196, 203 (1868)).

104. *Id.* (brackets in original) (quoting Stuart Cay Marina v. M/V Special Delivery, 510 F. Supp. 2d 1063, 1072 (S.D. Fla. 2007)).

105. *Id.* at 597.