No. 08-214

In The
Supreme Court of the United States

ATLANTIC SOUNDING CO., INC.
and WEEKS MARINE, INC.,

Petitioners,

v.

EDGAR L. TOWNSEND,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF OF *AMICI CURIAE* THE AMERICAN WATERWAYS OPERATORS, THE CHAMBER OF SHIPPING OF AMERICA, AND THE DREDGING CONTRACTORS OF AMERICA IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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The American Waterways Operators, together with the Chamber of Shipping of America and the Dredging Contractors of America, submits this brief as *amicus curiae* in support of the position of Petitioners Atlantic Sounding Co., Inc. and Weeks Marine, Inc., with the written consent of all parties pursuant to Sup. Ct. R. 37.2(a).[1]

INTEREST OF *AMICI CURIAE*

The American Waterways Operators (AWO) is the national trade association for the nation's inland and coastal tugboat, towboat, and barge industry. The industry employs more than 30,000 American seamen and owns and operates nearly 4,000 tugboats and towboats and more than 27,000 barges throughout the country. AWO represents the largest segment of the U.S.-flag domestic fleet. Its 350 member companies carry more than 800 million tons of domestic cargo every year. They operate their vessels on the nation's inland rivers, on the Atlantic, Pacific, and

[1] In accordance with Sup. Ct. R. 37.2(a), *amici curiae* the American Waterways Operators (AWO), the Chamber of Shipping of America (CSA), and the Dredging Contractors of America (DCA) timely notified the parties of their intent to file a brief in support of Petitioners, and letters of consent to the filing of this *amicus* brief have been filed with the Clerk of the Court. Pursuant to Sup. Ct. R. 37.6, counsel for AWO, CSA, and DCA states that it authored this brief in its entirety and that no other person or entity other than AWO, CSA, and DCA provided monetary support for the preparation or submission of this brief.

Gulf coasts, on the Great Lakes, and in ports and harbors around the country.

For over 60 years, AWO has worked to promote a better understanding of the domestic waterborne transportation industry and its safe and environmentally sound contribution to the U.S. economy. To that end, AWO acts as the towing industry's principal advocate with policymakers and federal officials in Washington D.C. In 1995, AWO and the Coast Guard entered into a written agreement establishing the Coast Guard-AWO Safety Partnership, illustrating their shared commitment to ensuring the safety of U.S. waters, vessels, and crews. AWO continues to demonstrate that commitment today as it works closely with the Coast Guard to create and implement a towing vessel inspection program pursuant to the Coast Guard and Maritime Transportation Act of 2004.

AWO is joined in this *amicus* brief by the Chamber of Shipping of America (CSA) and the Dredging Contractors of America (DCA). CSA represents 31 U.S.-based companies that own, operate, or charter oceangoing vessels, including container ships, tankers, chemical ships, dry bulk vessels, integrated tug and barge units and other merchant vessels engaged in both the domestic and international trades, or that maintain a commercial interest in the operation of such oceangoing vessels. CSA's member companies and the international trade associations with which they are affiliated represent 75% of all oceangoing vessels calling in U.S. ports. Their ships call at ports

on every coast of the United States. CSA promotes sound public policy through legislative and regulatory initiatives that include marine safety, maritime security, and environmentally protective operating principles. CSA sits on the U.S. delegation to the International Maritime Organization in London, and is the U.S. shipowner representative to the International Labor Organization.

The DCA is the national trade association for the dredging industry. DCA works to improve the quality and responsiveness of dredging service delivery to the nation, ensuring that America's ports, waterways, wetlands and beaches are efficiently constructed and maintained in an environmentally sustainable manner. DCA has represented the interests of the U.S. dredging industry and its members for over twenty-six years. The present membership includes nine large dredging companies, eleven small companies, and five associate members. Its members operate on the Atlantic, Gulf, and Pacific coasts, the Great Lakes, the inland rivers, and in Hawaii and Alaska. DCA represents the dredging industry on key issues before Congress and is an active partner to the U.S. Army Corps of Engineers, public port authorities, and state and local governments.

The members of AWO, CSA, and DCA rely upon the predictability and uniformity of federal maritime law to properly assess and protect against the risks inherent in the maritime industry. They enter contracts, hire employees, buy insurance, and make countless other decisions based upon uniform principles of

federal maritime law. If the rules change from circuit to circuit, they cannot make informed business decisions. As this Court noted in *Miles v. Apex Marine Corp.*, 498 U.S. 19, 36 (1990), federal maritime law is now largely circumscribed by statute, and members of the maritime industry need to be able to rely upon the boundaries imposed by federal maritime legislation. AWO, CSA, and DCA therefore support Petitioners' request for review of the Eleventh Circuit decision in *Atlantic Sounding Co. v. Townsend,* 496 F.3d 1282 (11th Cir. 2007) in order to resolve the conflict caused by the failure of the First, Fourth, Sixth, and Eleventh Circuit Courts of Appeal to follow this Court's direction in *Miles* and preclude awards of punitive damages in maintenance and cure claims.

SUMMARY OF THE ARGUMENT

This Court should grant certiorari because a stark conflict exists between the circuit courts. Consistent with the Court's decision in *Miles*, the Second, Third, Fifth, and Ninth Circuits have held that a seaman cannot recover punitive damages in maintenance and cure cases. *See Kraljic v. Berman Enter., Inc.*, 575 F.2d 412 (2d Cir. 1978), *Kopacz v. Delaware River and Bay Auth.*, 248 Fed. App'x 319 (3d Cir. 2007), *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496 (5th Cir. 1995), and *Glynn v. Roy Al Boat Mgmt. Corp.*, 57 F.3d 1495 (9th Cir. 1995). In contrast, the First, Fourth, Sixth, and Eleventh Circuits have

allowed seamen to recover punitive damages in maintenance and cure cases. *See Robinson v. Pocahontas, Inc.*, 477 F.2d 1048, 1051 (1st Cir. 1973), *Manuel v. United States*, 50 F.3d 1253, 1260 n.6 (4th Cir. 1995), *Al-Zawkari v. American S.S. Co.*, 871 F.2d 585, 590 n.8 (6th Cir. 1989), and *Townsend*, 496 F.3d at 1286. This Court should accept review of the Eleventh Circuit decision in *Townsend* to resolve the conflict.

This Court should also accept review of this case to restore uniformity to the federal maritime law governing seamen's injury claims. In *Miles*, this Court recognized the intent of Congress to make federal maritime law uniform and predictable. *Miles*, 498 U.S. at 26-27. *Miles* further acknowledged the constitutional principle that if federal statutes dominate an area of law, judges "are not free to expand remedies at will simply because it might work to the benefit of seamen . . . " *Miles*, 498 U.S. at 36. By extending punitive damages to seamen in maintenance and cure cases, *Townsend* conflicts with the principles of uniformity and separation of powers. This Court should therefore grant certiorari to realign the case law with *Miles*.

The Eleventh Circuit itself has all but asked this Court to explicitly overrule pre-*Miles* precedent. *Townsend* conflicts not only with this Court's reasoning in *Miles*, but also with the Third, Fifth, and Ninth Circuits, all of which have followed *Miles* to preclude punitive damages in maintenance and cure claims. *See Kopacz*, 248 Fed. App'x at 323, *Guevara*, 59 F.3d at 1513, and *Glynn*, 57 F.3d at 1505. And yet,

Townsend offers no rationale for the decision to allow punitive damages; the Eleventh Circuit merely believes it is bound by pre-*Miles* precedent that has been subsequently overruled by the Fifth Circuit. This Court should therefore issue an opinion putting discredited pre-*Miles* precedent to rest.

ARGUMENT

I. This Court Should Accept Certiorari to Resolve the Conflict Between the Circuits and Restore Uniformity to Maritime Law.

In *Miles*, this Court made clear that non-pecuniary damages are unavailable to seamen making claims under the Jones Act, the Death on the High Seas Act (DOHSA), or general maritime law. *Miles*, 498 U.S. at 37. Following this Court's lead in *Miles*, the Third, Fifth, and Ninth Circuits all ruled that a seaman asserting a claim for maintenance and cure could not recover punitive damages. *See Kopacz*, 248 Fed. App'x at 323; *Guevara*, 59 F.3d at 1513 (overruling *Holmes v. J. Ray McDermott & Co*, 734 F.2d 1110 (5th Cir. 1984)); *Glynn*, 57 F.3d at 1505; *see also Kraljic*, 575 F.2d at 416 (pre-*Miles* case reversing district court decision to allow punitive damages). The Eleventh Circuit and the Fourth Circuit, however, refused to abandon pre-*Miles* precedent and allowed injured seamen to claim punitive damages in suits for maintenance and cure. *See Townsend*, 496 F.3d at 1286; *Manuel*, 50 F.3d at 1260 (citing *Holmes*,

734 F.2d at 1118 and *Robinson v. Pocahontas, Inc.*, 477 F.2d 1048, 1051-52 (1st Cir. 1973)).

The conflict is rooted in the reference to "exemplary damages" in the ***dissent*** to *Vaughan v. Atkinson*, 369 U.S. 527 (1962). Based on that dissent, the First Circuit, in 1973, became the first to allow a seaman to recover punitive damages in a maintenance and cure case. *See Robinson*, 477 F.2d at 1051. *Robinson*, however, improperly relied on the dissent in *Vaughan*. *See Purcell v. BankAtlantic Fin. Corp.*, 85 F.3d 1508, 1513 (11th Cir. 1996) ("[A] dissenting Supreme Court opinion is not binding precedent."). Like *Miles*, the decision of the Court in *Vaughan* never extended non-pecuniary remedies to seamen. *Robinson* mistakenly did so and thus generated the conflict that is now before this Court.

For the most part, maintenance and cure decisions contrary to *Miles's* prohibition on non-pecuniary damages either pre-date *Miles* or trace their reasoning to *Robinson* and the dissent in *Vaughan*. *See, e.g.*, *Holmes*, 734 F.2d at 1118 (pre-*Miles* case citing *Vaughan* and *Robinson*); *Hines v. J.A. Laporte, Inc.*, 820 F.2d 1187, 1188 (11th Cir. 1987) (pre-*Miles* case citing *Vaughan*, *Robinson*, and *Holmes*); *Al-Zawkari*, 871 F.2d at 590 n.8 (pre-*Miles* case citing *Holmes*); *Manuel*, 50 F.3d at 1260 n.6 (post-*Miles* case citing *Holmes* and *Robinson*). These decisions need to be brought in line with *Miles*. This Court should grant certiorari to resolve the clear circuit conflict and confirm the maritime rule prohibiting punitive damages in maintenance and cure claims.

II. *Miles* Reaffirmed the Congressional Mandate for Uniformity and Predictability in Maritime Law.

Congress intended that "federal admiralty law should be a system of law coextensive with, and operating uniformly in, the whole country." *Miles*, 498 U.S. at 27. In accordance with the "constitutionally based principle," maritime law is "a conceptual body whose cardinal mark is uniformity." *Miles*, 498 U.S. at 27; *Lewis v. Timco, Inc.*, 716 F.2d 1425, 1428 (5th Cir. 1983). Maritime courts have also acknowledged that "the need for predictability in the commercial maritime arena is arguably greater than in other areas of law and commerce." *Coats v. Penrod Drilling Corp.*, 61 F.3d 1113, 1137 (5th Cir. 1995). This uniformity, "with [its] companion quality of predictability, [is] a prized value in the extensive underwriting of marine risks, [and is] best preserved by declining to recognize a new and distinct doctrine without assuring the completeness of its fit." *Lewis*, 716 F.2d at 1428. As the Fifth Circuit noted in *Coats*,

> It is axiomatic that when the rules of law are clear, parties may contract within or around their boundaries, and the commercial system is facilitated in many ways, including reduced litigation, more favorable insurance coverage, and overall ease of application.

Coats, 61 F.3d at 1137.

After extensive analysis of congressional intent, *Miles* held that because non-pecuniary damages are

not available under DOHSA or the Jones Act, the uniformity principle dictates that such damages are likewise unavailable in seamen's claims under general maritime law. *Miles*, 498 U.S. at 32-33. It therefore follows that punitive damages are unavailable in a seaman's claim for maintenance and cure. The Eleventh Circuit's contrary decision in *Townsend* thus contradicts the congressional and judicial mandate of uniformity. As Congress and this Court recognize, such inconsistency does not serve the interests of seamen, vessel operators, or the courts that must decide their disputes.

III. The Eleventh Circuit Decision Violates the Constitutional Principle of Separation of Powers.

"Cognizant of the constitutional relationship between the courts and Congress," *Miles* reiterated that federal courts "are not free to expand remedies at will" in maritime cases where Congress has spoken. *Miles*, 498 U.S. 37, 36. *Miles* was explicit that the Jones Act "limits recovery to pecuniary loss," noting that "[i]ncorporating FELA unaltered into the Jones Act, Congress must have intended to incorporate the pecuniary limitation on damages as well." *Id.* at 32. Based on the uniformity principle, *Miles* reasoned that a plaintiff was therefore precluded from seeking non-pecuniary damages in a seaman's injury or death claim under general maritime law since such damages went beyond those provided by Congress under the Jones Act. *Miles*, 498 U.S. at 36-37.

The Eleventh Circuit attempted to distinguish *Miles* because it involved death, as opposed to injury, of a seaman. *See, e.g., Townsend*, 496 F.3d at 1286. The Court's opinion in *Miles*, however, was based upon the Jones Act, and it specifically mentioned the statutory scheme for seamen's injury and death claims. Citing separation of powers concerns, the Court refused to create remedies that go "well beyond the limits of Congress' ordered system of recovery for seamen's ***injury*** and death." *Miles*, 498 U.S. at 36 (emphasis added). *Miles* recognized that to preclude non-pecuniary damages under the Jones Act and allow them under general maritime law contradicts the constitutional principle of uniformity: "It would be inconsistent with our place in the constitutional scheme were we to sanction more expansive remedies in a judicially created cause of action . . . than Congress has allowed . . . " *Miles*, 498 U.S. at 32. For the same reason, it would be inconsistent to allow non-pecuniary damages in a seaman's maintenance and cure claim, which is similarly a judicially created cause of action, when such damages are not allowed in seamen's injury claims under the Jones Act. As the Court stated in *Miles*:

> We no longer live in an era when seamen and their loved ones must look primarily to the courts as a source of substantive legal protection from injury and death; Congress and the States have legislated extensively in these areas. In this era, an admiralty court should look primarily to these legislative enactments for policy guidance. We may supplement these statutory remedies where

> doing so would achieve the uniform vindication of such policies consistent with our constitutional mandate, but we must also keep strictly within the limits imposed by Congress. Congress retains superior authority in these matters, and an admiralty court must be vigilant not to overstep the well-considered boundaries imposed by federal legislation. These statutes both direct and delimit our actions.

Miles, 498 U.S. at 27. This Court should grant certiorari to confirm the principle set forth in *Miles*: that the courts are not free to expand the remedies provided by Congress in the Jones Act by allowing the imposition of non-pecuniary damages in a seaman's injury claim under general maritime law.

IV. The Eleventh Circuit Has Essentially Asked This Court to Bury *Hines* and *Holmes* So That It May Follow the Reasoning in *Miles*.

The Eleventh Circuit all but concedes that its decision in this case is based on case law this Court should overrule: *Hines v. J.A. Laporte, Inc.*, 820 F.2d 1187 (11th Cir. 1987). The Eleventh Circuit acknowledges that *Miles* forecloses non-pecuniary damages in a wrongful death action under DOHSA, the Jones Act, and general maritime law. *Townsend*, 496 F.3d at 1285. It refuses, however, to connect the dots and find punitive damages foreclosed for a maintenance and cure claim. The Eleventh Circuit offers no rationale to

contradict the reasoning in *Miles*. Instead, it relies on this Court's silence to justify the discredited reasoning in *Hines* as the basis for its decision. "[Petitioner's] argument can 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." *Townsend*, 496 F.3d at 1286.

The Eleventh Circuit makes clear, however, that the *Hines* reasoning underlying its current decision no longer holds water. In *Hines*, "[w]e decided to follow the Fifth Circuit in adopting the reasoning of *Merry Shipping*." *Townsend*, 496 F.3d at 1285 (citing *Complaint of Merry Shipping*, 650 F.2d 622 (5th Cir. 1981)). As the Fifth Circuit has pointed out, however, "*Hines*'s reliance on *Merry Shipping* is now analytically problematic because, as explained, *Merry Shipping* was effectively overruled by the later decision in *Miles*." *Guevara*, 59 F.3d at 1509.

The Fifth Circuit similarly eliminated *Holmes v. J. Ray McDermott & Co.*, 734 F.2d 1110 (5th Cir. 1984), upon which *Townsend* also relies (*see Townsend*, 496 F. 3d at 1285): "Our *Holmes* precedent for the availability of punitive damages in maintenance and cure cases is no longer well-founded. In particular, the advent of *Miles* brings about significant changes in the admiralty that we cannot ignore." *Guevara*, 59 F.3d at 1513. The *Guevara* court went on to say, "when we couple the weakened foundation of *Holmes* with our understanding of the *Miles*

uniformity principle, we are persuaded that punitive damages should no longer be available in cases of willful nonpayment of maintenance and cure under the general maritime law. To this extent, therefore, *Holmes* is overruled." The Eleventh Circuit, not to mention the Fourth and Sixth Circuits, which also rely upon *Holmes*, needs to hear from this Court that *Hines* and *Holmes* are overruled.

The District Court in this case made the same tacit request. Like the Eleventh Circuit, the District Court's Order made no argument against *Miles*, stating only: "we are not at liberty to disregard binding case law [i.e. *Hines*] that . . . has been only weakened, rather than directly overruled, by the Supreme Court. . . . This is so even if we are convinced that the Supreme Court will overturn its previous decision the next time it addresses the issue. Though wounded, the legal principle in question still marches on and we are ordered to follow. We will join the funeral procession only after the Supreme Court has decided to bury it." *Atlantic Soundings, Inc. v. Townsend*, No. 3:05-cv-649-J-20HTS at 4 (M.D. Fla. April 7, 2006) (citing *U.S. v. Gibson*, 434 F.3d 1234, 1246-47 (11th Cir. 2006)). The First, Fourth, Sixth, and Eleventh Circuits will not, of their own accord, join the procession led by the Second, Third, Fifth, and Ninth Circuits until directed by this Court. It is therefore time for this Court to bury *Hines* and *Holmes*.

CONCLUSION

For the reasons set forth above, AWO, CSA, and DCA respectfully request that the petition for a writ of certiorari be granted.

Respectfully submitted,

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September 16, 2008

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ATLANTIC SOUNDINGS COMPANY, INC. et. al,

Plaintiffs,

v.

EDGAR TOWNSEND,

Defendant.

Case No.3:05-cv-649-J-20HTS

EDGAR TOWNSEND,

Plaintiff,

v.

WEEKS MARINE, INC.,

Defendant.

Case No.3:05-cv-653-J-20HTS

(Filed Apr. 7, 2006)

ORDER

Before the Court is Atlantic Soundings Co. Inc.'s and Weeks Marine Inc.'s ("AS & WM") Motion to Strike, Or, In the Alternative, Dismiss Edgar Townsend's Request for Punitive Damages (Doc. No. 30, filed March 16, 2006), to which Townsend responded (Doc. No. 38, filed March 31, 2006). Upon due consideration, AS & WM's Motion is **DENIED**.

Edgar Townsend seeks punitive damages on the grounds that AS & WM willfully and wantonly withheld from him maintenance and cure. On July 5,

2005, Townsend, an able bodied seaman and crew member of the Motor Tug Thomas, allegedly landed shoulder first on the steel deck of the Motor Tug Thomas, injuring his right shoulder, rotator cuff, and possibly fracturing his right clavicle. Townsend further alleges that on July 7, 2005, Weeks Marine advised him that it would not provide him with maintenance and cure. Townsend suggests that "Weeks Marine has a history of manufacturing pretexts for denying maintenance and cure" and that such denials are "arbitrary and capricious." Accordingly, Townsend seeks both attorneys fees and punitive damages. AS & WM suggest that punitive damages are no longer available to individuals in Mr. Townsend's position. Relying on a Fifth Circuit case, *Guevara v. Maritime Overseas Corp.*, AS & WM argue that punitive damages are unavailable under a Jones Act claim. *See Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496, 1512 (5th Cir. 1995) (en banc).

In 1987, the Eleventh Circuit held that "both reasonable attorney's fees and punitive damages may be legally awarded in a proper case." *Hines v. J.A. LaPorte*, Inc. 820 F.2d 1187, 1189 (11th Cir. 1987). Proper cases include those where maintenance and cure has been arbitrarily and willfully withheld from a seaman. While noting that there is "no bright line to measure arbitrary conduct," examples of willfulness meriting punitive damages and attorneys fees include: "(1) laxness in investigating a claim; (2) termination of benefits in response to the seaman's retention of counsel or refusal of a settlement offer;

and (3) failure to reinstate benefits after diagnosis of an ailment previously not determined medically." *Id.* at 1190 (citation omitted).

Subsequent to *Hines*, the U.S. Supreme Court in 1990 ruled that the Jones Act, the Death on the High Seas Act (DOHSA), and general maritime law preclude recovery for non-pecuniary loss, thereby "restor[ing] a uniform rule applicable to all actions for the wrongful death of a seaman, whether under DOHSA, the Jones Act, or general maritime law." *Miles v. Apex Marine Corp.*, 498 U.S. 19, 33 (1990). AS & WM argue that courts have followed the Supreme Court's rationale in *Miles* and have refused to supplement the list of remedies afford by Congress to seamen. *See, e.g., Blige v. M/V GEECHEE GIRL*, 180 F.Supp.2d 1349, 1352 (S.D.Ga. 2001) ("Under the *Miles* uniformity principle, then, punitive damages are unavailable in maintenance and cure actions under general maritime law."). However, this Court is not in the business of predicting whether "the Eleventh Circuit would follow *Guevara* when presented with the issue." *Id.* (citing *Hollinger v. Kirby Tankships, Inc.*, 910 F.Supp. 571 (S.D. Ala. 1996)).

Until the Eleventh Circuit overrules *Hines*, it is still the controlling precedence. In cases subsequent to *Miles* in 1990, the Eleventh Circuit has noted the viability of *Hines* and the availability of punitive damages in exceptional cases. *See, e.g., In re Amtrak Sunset Ltd. Train Crash*, 121 F.3d 1421, 1429 (11th Cir. 1997) (punitive damages may be available in "exceptional circumstances such as willful failure to

furnish maintenance and cure to a seaman"); *Flores v. Carnival Cruise Lines*, 47 F.3d 1120, 1127 (11th Cir. 1995) ("Carnival did not abrogate any established legal duty toward Flores, and therefore did not exhibit willful and wanton misconduct, which is the standard Flores must meet to recover punitive damages in admiralty law."); *Kasprik v. United States*, 87 F.3d 462, 464 (11th Cir. 1996) ("*Hines v. J.A. LaPorte, Inc.*, 820 F.2d 1187 (11th Cir.1987) is the leading case in our circuit and is consistent with traditional admiralty law which provides the highest safeguards for a seaman's right to maintenance and cure.").

Moreover, the principle of stare decisis requires this Court to follow that law. *Scott v. Wainwright*, 617 F.2d 99, 104 (5th Cir. 1980).[1] In an analogous setting to the question before this Court, the Eleventh Circuit has recently instructed: "It is not given to us to overrule the decisions of the Supreme Court. We have stated repeatedly, and with respect to the very issue presented in this appeal, that 'we are not at liberty to disregard binding case law that is so closely on point and has been only weakened, rather than directly overruled, by the Supreme Court.'" *U.S. v. Gibson*, 434 F.3d 1234, 1246-47 (11th Cir. 2006) (citations omitted). "This is so even if we are convinced that the Supreme Court will overturn its

[1] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

previous decision the next time it addresses the issue. Though wounded, [the legal principle in question] still marches on and we are ordered to follow. We will join the funeral procession only after the Supreme Court has decided to bury it." *Id.* This reasoning and rationale applies with equal force to a district court with respect to binding case law from the Eleventh Circuit.

Accordingly, it is **ORDERED AND ADJUDGED**

Atlantic Soundings Co. Inc.'s and Weeks Marine Inc.'s Motion to Strike, Or, In the Alternative, Dismiss Edgar Townsend's Request for Punitive Damages is **DENIED.**

DONE AND ENTERED at Jacksonville, Florida, this 7th day of April, 2006.

/s/ Harvey E. Schlesinger
HARVEY E. SCHLESINGER
United States District Judge

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