No. 18-266

IN THE

Supreme Court of the United States

FRANCIS & MARY MARION, CHARLES & MARY PICKNEY, JOHN & ELIZABETH RUTLEDGE, JAMES S. THURMOND, AND ESSIE MAE WASHINGTON-WILLIAMS,

Petitioners,

v.

SALLY'S SEAFOOD SHACK, INC.,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR RESPONDENT

Team O

QUESTIONS PRESENTED

1. Did the South Carolina District Court improperly hold that the Limited Liability Act 46 U.S.C. § 30501-12 is an independent basis for admiralty jurisdiction?

2. Did the Fourth Circuit Court of Appeals err in its decision to dismiss the interlocutory appeal pursuant to 28 U.S.C. § 1292(a)(3) when Sally's Seafood Shack's liability *vel non* would not be determined until the Phase Two trial?

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OPINIONS BELOW

The decision of the Federal District Court can be found at *In re Sally's Seafood Shack, Inc.*, 243 F. Supp. 3d 702 (D.S.C. 2017). The decision of the Fourth Circuit Court can be found at *In re Sally's Seafood Shack, Inc.*, 890 F.3d 1384, 2018 AMC 3333 (4th Cir. 2018).

STATEMENT OF THE JURISDICTION

The district courts have original jurisdiction to any case in admiralty jurisdiction. 28 U.S.C. § 1333. Respondent filed for petition to limit liability under the Limited Liability Act on November 5, 2015, and the district court granted the petition on March 13, 2017. The district court determined in that decision that the invocation of the Limited Liability Act creates an independent basis for admiralty jurisdiction. This Court has jurisdiction over an appeal from final judgment of the United States District Court of Appeals, Fourth Circuit pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

A South Carolina corporation, Sally's Seafood Shack, Inc. (hereinafter "Respondent") operated a floating seafood restaurant known as Sally's Seafood Shack. R. at 9a. The restaurant was located in a converted fishing vessel, the *F/V Flamingo*, which was permanently moored on the banks of the Cooper River in Charleston, South Carolina. R. at 10a. The prior owner had operated it as a fishing vessel for twenty years until Respondent purchased the *Flamingo* and converted it to a restaurant in 2008. R. at 10a. On July 17, 2015, an explosion in the galley of the *Flamingo* ripped a hole in the hull beneath the waterline and the vessel quickly sank at its anchorage in twelve feet of water. R. at 10a. John Calhoun, who was solely responsible for the explosion, was adequately trained in how to handle the gas range in the galley, and the vessel was adequately equipped to enable him to carry out the task. R. at 14a.

Francis & Mary Marion, Charles & Mary Pickney, John & Elizabeth Rutledge, James S. Thurmond, and Essie Mae Washington-Williams (hereinafter "Petitioners") were injured in the explosion on the restaurant boat *F/V Flamingo*. R at 1b. Petitioners then filed for various state tort actions, which were halted when Respondent filed for a petition to limit liability under the Limited Liability Act 46 U.S.C. §§ 30501-12. R at 1b.

STATEMENT OF THE PROCEEDINGS

After the incident that injured the Petitioners, Respondent filed for a petition to limit liability under the Limited Liability Act 46 U.S.C. § 30501-12. R. at 1b. The Federal District Court of South Carolina bifurcated the trial. R. at 2a. In the Phase One trial, the district court granted the petition to limit liability and found that invocation of the Limited Liability Act provided basis for admiralty jurisdiction. R. at 2a; 12a; 14a. The Phase Two trial had not yet been held, which would serve as the determination of Respondent's liability *vel non*. R. at 2a. Petitioners appealed the holding in the Phase One trial, and subsequently, the Fourth Circuit Court of Appeals found for Respondent, holding that the district court correctly determined that the Limited Liability Act is an independent basis for admiralty jurisdiction. R. at 5a-6a. Thusly, the petition for limited liability was appropriately granted. R. at 5a-6a. Further, the circuit court dismissed the case because they lacked jurisdiction pursuant 28 U.S.C. § 1292(a)(3). R. at 6a. Petitioners now appeal the Fourth Circuit Court's decision. R. at 2a; 1b.

SUMMARY OF ARGUMENT

First, the district court did not err in holding that the Limitation Act, 46 U.S.C. §§ 30501-12, provides an independent basis for admiralty jurisdiction. The Supreme Court in *Richardson v. Harmon* held that the Limitation Act may limit the liability of a vessel owner, regardless of whether the liability resulted from a maritime or non-maritime tort. Once a vessel owner properly petitions for the limitations of the Act, the claim immediately falls under district court admiralty jurisdiction. The Supreme Court in *Richardson* clearly established that the Limitation Act is an independent basis of admiralty jurisdiction. The decision in *Richardson* is supreme law and all lower courts are bound by its precedent. *Richardson* has been upheld for decades by the Supreme Court and the great weight of judicial authority. Accordingly, the Limitation Act remains an independent basis for admiralty jurisdiction under *Richardson*.

Second, this Court should affirm the Fourth Circuit's decision to dismiss Petitioners' interlocutory appeal pursuant to 28 U.S.C. § 1292(a)(3), which only allows for interlocutory appeals in admiralty cases where the rights and liabilities of the parties have been determined. There are two different approaches to the statute: the Fifth Circuit approach and the Ninth Circuit approach. The Fourth Circuit correctly followed the approach adopted by the Fifth Circuit because it properly conforms with Fourth Circuit precedent, *Evergreen Int'l (USA) Corp. v. Standard Warehouse*. Additionally, the Fifth Circuit approach is appropriate because it follows the intent of Congress at the inception of 28 U.S.C. § 1292(a)(3). The statute was intended to be read narrowly and to only allow for interlocutory appeals of decrees that determine the rights and liabilities of the parties to admiralty cases. Lastly, the Fifth Circuit approach is the more practical approach moving forward in regards to the appellate docket. Its narrow interpretation will limit the amounts of interlocutory appeals from each and every decision made at the district court level. For these reasons set forth, this Court should affirm the decision to dismiss Petitioners' interlocutory appeal pursuant to 28 U.S.C. § 1292(a)(3).

STANDARD OF REVIEW

The instant appeal presents questions of statutory interpretation, which are questions of law. *Stone v. Instrumentation Lab. Co.*, 591 F.3d 239, 242-43 (4th Cir. 2009). Questions of law are subject to a de novo standard of review. *See Salve Regina Coll. v. Russell*, 499 U.S. 225 (1991); *Pierce v. Underwood*, 487 U.S. 552 (1988).

ARGUMENT

I. The district court did not err in holding that the Limitation Act 46 U.S.C. §§ 30501-12, provides an independent basis for admiralty jurisdiction because to hold otherwise would be against Supreme Court precedent and the great weight of judicial authority.

The Limitation Act of 1851 allows a vessel owner to limit liability for damage or injury, effected without the owner's privity or knowledge, to the value of the vessel or the owner's interest in the vessel. 46 U.S.C. §§ 30501-12. In 1884, Congress amended the Limitation Act to add that the liability of a vessel owner "shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole . . . " Act of June 26, 1884, ch. 121, § 18, 1884, 48th Congress. The current codification of the Limitation Act provides that "the liability of the owner of a vessel for any claim, debt, or liability . . . shall not exceed the value of the vessel and pending freight." 46 U.S.C. § 30505(a). The Act does not confer jurisdiction to a specific court, nor does it provide procedures in which a vessel owner may invoke the benefits of the Act. *Id*.

The Supreme Court determined that the district courts have jurisdiction over the Act because they are courts of admiralty jurisdiction. *Norwich Co. v. Wright*, 80 U.S. 104, 124, 1998 AMC 2061, 2073 (1871). The same Court further held that the Supreme Court "undoubtedly has the power to make all needful rules and regulations for facilitating the course of proceeding." *Id*. Accordingly, the district court has exclusive jurisdiction over the Limitations Act and the Supreme Court has the ability to facilitate the procedures of invoking the Act. *Id*. Initially, the Court interpreted the Limitations Act as a maritime law that could only be invoked if the incident occurred on navigable waters and had a nexus to maritime activity. *Ex parte Phenix Ins. Co.*, 118 U.S. 610, 625, 2001 AMC 595, 604 (1886); *Butler v. Bos. & Savannah S.S. Co.*, 130 U.S. 527, 557 (1889).

Subsequently, in 1911, the *Richardson* Court established that the Limitations Act can limit a vessel owner's liability regardless of whether the tort qualified as maritime or non-maritime. *Richardson v. Harmon*, 222 U.S. 96, 106, 2001 AMC 1207, 1212 (1911). Based on this decision, the district court would continue to have exclusive admiralty jurisdiction over cases involving the Limitations Act, notwithstanding the fact that the tort may not have occurred on navigable waters. *Id*. The Court added that once a vessel owner has properly applied for the benefits of the Limitation Act, the district court must "make an order to restrain the further prosecution of all and any suit or suits against said owner or owners in respect of any such claim or claims." *Id*. (citing *Providence & N.Y. S.S. Co. v. Hill Mfg. Co.*, 109 U.S. 578, 600 (1883)). The very act of a vessel owner applying for the benefits of the Limitation Act confers admiralty jurisdiction to the district court to resolve the claims. *Id*. The Court's holding in *Richardson* established that admiralty jurisdiction was no longer a prerequisite for invoking the benefits of the Limitation Act, but that the Act itself is an independent basis for admiralty jurisdiction. *Id*.

The South Carolina District Court properly held that the Limitation Act grants the court admiralty jurisdiction over the limitation proceedings of Respondent. R. at 13a. The court correctly interpreted and relied on the Supreme Court's ruling in *Richardson,* which granted admiralty jurisdiction to district courts in matters involving the Limitation Act. R. at 13a. R. at 14a. The district court's finding that the Limitation Act is an independent basis for admiralty jurisdiction in the instant case was proper.

A. The district court's holding was consistent with Supreme Court precedent in *Richardson*, which established the Limitation Act as an independent basis of admiralty jurisdiction.

When the Supreme Court in *Richardson* determined the Limitation Act is an independent basis for admiralty jurisdiction, the Court's decision became "Supreme law of the land" under Article IV of the Constitution. U.S. Const. Art. VI cl. 2; *Richardson*, 222 U.S. at 106. By reason of the Supremacy Clause, "decisions of [the Supreme Court] on national law have binding effect on all lower courts whether state or federal." *Hanch v. K. F. C. Nat'l Mgmt. Corp.*, 615 S.W.2d 28, 33 (Mo. 1981) (citing *United States ex rel. Lawrence v. Woods*, 432 F.2d 1072, 1075 (7th Cir. 1970). Appropriately, Supreme Court decisions are binding and cannot be overturned by lower courts. *Id*.

In *Richardson*, the Court was faced with a vessel owner who petitioned to limit his liability for a collision that occurred on Lake Erie. *Richardson*, 222 U.S. at 99. A steam barge collided with a railway drawbridge which resulted in damages to the vessel and the bridge. *Id*. at 100. The district court, based on the Limitation Act prior to the 1884 amendment, dismissed the limitation petition reasoning that the collision was a non-maritime tort. *Id*. at 101. The district court found that the damage occurred on land which was beyond the reach of the Limitation Act. *Id*. Thus, the court did not have admiralty jurisdiction over the limitation petition because non-maritime torts are "not cognizable in a court of admiralty." *Id*. The district court relied on the Supreme Court holding in *Ex parte Phenix Ins. Co.* which affirmed a lower court's dismissal of a limitation petition for lack of admiralty jurisdiction. *Ex parte Phenix Ins. Co.*-, 118 U.S. at 625. The Supreme Court in *Phenix* held that the tort must be maritime in order for the vessel owner to submit a petition under the Limitation Act. *Id*.

Upon appeal, the Supreme Court in *Richardson* expressly rejected the maritime requirement prescribed by *Ex parte Phenix Ins. Co.* and reversed the district court's dismissal of the petition of limitation. *Richardson*, 222 U.S. at 106. The Supreme Court distinguished *Richardson* from *Phenix*, relying on the superseding 1884 amendment to the Limitation Act. *Id*. at 105. The Court found that the language included by Congress in 1884, which added the words "and liabilities," altered the scope of the Limitation Act. *Id*. The Court concluded that the 1884 amendment was intended to add "any and all debts and liabilities" that were not included in the original Limitation Act. *Id*. Based on this analysis, though non-maritime torts were not included in the original, the amended Limitation Act encapsulated any and all liabilities sustained by a vessel owner. *Id*. Therefore, the district court has admiralty jurisdiction over limitation proceedings for all liabilities of a vessel owner that properly applies for the benefits of the Limitation Act. *Id*. The Supreme Court reasoning revealed that any actions that incorporate the Limitation Act are separate from normal tort actions and fall under admiralty jurisdiction. *Id*.

Here, the limitation petition by Respondent is clearly bound by the Supreme Court precedent in *Richardson*. The district court properly determined that Respondent complied with all procedures required to invoke the Limitation Act prescribed by 46 U.S.C. § 30511. R. at 9a-10a. The district court further held that the *Flamingo* satisfied the "seagoing vessel" element of the Limitation Act relying on the "reasonable observer" test implemented by the Supreme Court in *Lozman*. R. at 13a. In addition, the explosion that sank the *Flamingo* was due to the sole negligence of the restaurant employee John Calhoun, not the owner of the vessel, Respondent. R. at 14a. Thus, the explosion was not caused by the "design or neglect" of Respondent and satisfied 46 U.S.C. § 30504. R. at 14a. Lastly, the person responsible for the explosion, John Calhoun, was adequately trained to carry out his duty to light the gas range. R. at 14a. Respondent had no "privity or knowledge" of the liability caused by John Calhoun which fulfills the final requirement under 46 U.S.C. § 30505(b). R. at 14a.

The district court took the correct steps in evaluating a limitation petition under the Limitation Act. The court appropriately adhered to Supreme Court precedent which granted them admiralty jurisdiction of cases invoking the Limitation Act. R. at 13a. The district court properly held that *Richardson* established the Limitation Act as an independent basis of admiralty jurisdiction. R. at 13a. The district court's holding was consistent with Supreme Court precedent and rightly endorsed the right of Respondent to limit their liability as a vessel owner.

B. The precedent established in *Richardson* has been continuously upheld by the great weight of judicial authority.

Since the *Richardson* holding, the fact that the Limitation Act provides an independent basis of admiralty jurisdiction has been confirmed by the Supreme Court and multiple judicial authorities. In 1927, the Supreme Court in *Hartford* held that a limitation petition on its own is an independent basis for admiralty jurisdiction. *Hartford Accident & Indem. Co. v. S. Pac. Co.*, 273 U.S. 207, 217 (1927). The *Hartford* Court found that the Limitation Act requires the petitioner to deposit payment, or "res," to the district court is determinative of the jurisdiction. *Id*. Once the district court has received payment under the Act, it is appropriate that the court have jurisdiction to decide the proceedings. *Id*. The Court reasoned that the district court "acquires the right" to resolve claims under the Limitation Act. *Id*. Similar to *Richardson*, the Court in *Hartford* also recognized that the Limitation Act supports admiralty jurisdiction "whether their claims are strictly in admiralty or not." *Id*. The *Hartford* Court found that the claim for limitations is an admiralty claim and the district court has the power to resolve it. *Id*. This interpretation paralleled the precedent set in *Richardson* and reinforced that the Act itself provides an independent basis for admiralty jurisdiction, regardless of the specific facts of the case. *Id*.

In 1941, the Supreme Court continued to recognize the Limitation Act as an independent basis for admiralty jurisdiction in *Just v. Chambers*. The Court stated that admiralty jurisdiction is "attached through a petition for limitation." *Just v. Chambers*, 312 U.S. 383, 386 (1941). This statement demonstrates the Court's view that the limitation petition alone is sufficient to establish admiralty jurisdiction. *Id*. The Court then cited to its holding in *Hartford* and reiterated that the Limitation Act applies to maritime and non-maritime torts. *Id*. In tandem with the *Hartford* decision, the Court in *Chambers* agreed that the procedures of the Limitation Act themselves grant authority to the admiralty courts. *Id*. (citing *Hartford*, 273 U.S. at 217). The Supreme Court decision in *Chambers* reaffirmed the conclusion initially found in *Richardson* that the Limitation Act provides an independent basis for admiralty jurisdiction.

A Supreme Court case in 1990, *Sisson v. Ruby*, was the most recent perceived challenge to *Richardson*. In *Sisson*, the Seventh Circuit held that the Limitation Act was not an independent basis of admiralty jurisdiction. *Sisson v. Ruby*, 497 U.S. 359, 360, 1990 AMC 1801, 1802 (1990). The case was appealed to the Supreme Court to determine whether the Limitation Act confers admiralty jurisdiction to the district court. *Id*. The Supreme Court granted certiorari and reversed on the grounds that the district court had admiralty jurisdiction under 28 U.S.C. § 1333(1). *Id*. The Supreme Court briefly stated in a footnote that it would not reach the question of whether or not the Limitation Act is an independent basis of admiralty jurisdiction. *Id*. at 359 n.1. The Court refused to address the question and made no indication that it felt compelled to revisit the longstanding precedent established in *Richardson*. *Id*.

The Court's decision in *Sisson* did not alter the status of *Richardson* as controlling precedent. In 2001, shortly after the Court's inconclusive footnote in

Sisson, the Supreme Court returned to the Limitation Act in *Lewis* and addressed it directly in its opinion. *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 452, 2001 AMC 913, 923 (2001). The issue before the Court in *Lewis* involved a conflict between the "saving to suitors clause" of 28 U.S.C. § 1333(1) and the Limitation Act. *Id*. at 442. When evaluating the case, the Supreme Court stated that "the Limitation Act granted the federal court jurisdiction" over the vessel owner's claim for limited liability. *Id*. at 452. Further, the Court declared that "[t]he district courts have jurisdiction over actions arising under the Limitation Act." *Id*. at 454. These statements by the *Lewis* Court revealed that the footnote in *Sisson v. Ruby* had no effect on the precedent established in *Richardson*. The Supreme Court precedent was reinforced, and the Limitation Act was upheld as an independent basis of admiralty jurisdiction.

Other courts that have been faced with the issue of admiralty jurisdiction under the Limitation Act have treated *Richardson* as controlling precedent. The Second Circuit addressed the issue in *The No. 6* when the petitioner's dredge damaged an underwater pipe that was buried in the ground. *The No. 6,* 241 F. 69, 70 (1917). The owner of the pipe argued that the tort was non-maritime, so the district court did not have admiralty jurisdiction. *Id*. The argument failed, and the district court found that it had admiralty jurisdiction. *Id*. The circuit court affirmed the district court's holding, reasoning that the Limitation Act provides an independent basis for admiralty jurisdiction. *Id*. at 71. The circuit court declared that "proceedings for limitation of a shipowner's liability . . . are within the general maritime law and admiralty jurisdiction, and . . . [is] an independent head of jurisdiction." *Id*. The circuit court maintained that its holding "is in strict conformity with *Richardson v. Harmon*." *Id*. The court in *The No. 6* clearly treated *Richardson* as controlling precedent and deemed that the Limitation Act provides an independent basis of admiralty jurisdiction.

Furthermore, the District Court of Massachusetts has ruled that the Limitation Act is an independent basis for admiralty jurisdiction. *In re Bernstein*, 81 F. Supp. 2d 176, 2000 AMC 760 (D. Mass. 1999); *The Trim Too*, 39 F. Supp. 271, 1941 AMC 1147 (D. Mass. 1941); *The Irving F. Ross*, 8 F.2d 313, 1923 AMC 1015 (D. Mass. 1923). In 1999, the court held that the decision in *Richardson* is binding and the court "has no choice but to heed the rule of *stare decisis* and follow *Richardson*." *In re Bernstein*, 81 F. Supp. at 182. The district court acknowledged that *Richardson* is controlling precedent and that it must rule in accordance with that decision. *Id*. The court properly conformed to Supreme Court precedent and ruled that the Limitation Act is an independent basis for admiralty jurisdiction. *Id*.

To this date, the Supreme Court precedent in *Richardson* has not been overturned by the Court. In fact, the nearly 80-year-old precedent has been upheld by the Supreme Court and multiple other courts. Accordingly, the South Carolina District Court properly followed the *Richardson* Court's holding that the Limitation Act is an independent basis for admiralty jurisdiction. R. at 13a. The district court's holding was proper because the precedent founded in *Richardson* has been upheld and is binding. Therefore, the district court's holding should be affirmed.

II. The Fourth Circuit did not err when it dismissed the interlocutory appeal for lack of jurisdiction pursuant to 28 U.S.C. § 1292(a)(3) when Respondent's liability *vel non* would not be determined until the Phase Two trial.

Petitioners' sole argument in support of appellate jurisdiction is that they are entitled to an interlocutory appeal as a matter of right under 28 U.S.C. § 1292(a)(3), which grants jurisdiction over appeals from:

> Interlocutory decrees of . . . district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed.

The District Court of South Carolina, and later the Fourth Circuit, found that the Limitation Act served as an independent basis of admiralty jurisdiction, and therefore, this section may potentially apply to the case at hand. R. at 3a. Judge Hammurabi takes note that the national jurisprudence construing 28 U.S.C. § 1292(a)(3) is "deplorably chaotic," and that there exists a long-standing conflict between the Fifth and Ninth Circuits regarding this issue. R. at 3a. The Fourth Circuit appropriately followed the Fifth Circuit approach because it is consistent with Fourth Circuit precedent, is consistent with the intent of Congress in enacting 28 U.S.C. § 1292(a)(3), and it would be the more practical approach moving forward.

A. The approach adopted by the Fifth Circuit is consistent with Fourth Circuit precedent.

28 U.S.C. § 1292(a)(3) vests jurisdiction in courts of appeal to hear interlocutory decrees determining the rights and liabilities of parties to admiralty cases as an exception to the general rule of finality and is to be construed narrowly. *Evergreen Int'l (USA) Corp. v. Standard Warehouse*, 33 F.3d 420, 424, 1995 AMC 635, 639 (4th Cir. 1994); see also *City of Fort Madison v. EMERALD LADY*, 990 F.2d 1086, 1088, 1993 AMC 2091, 2093-94 (8th Cir. 1993); *Seattle-First Nat'l Bank v. Bluewater Partnership*, 772 F.2d 565, 568, 1986 AMC 1296, 1300 (9th Cir. 1985); *Hollywood Marine, Inc. v. M/V ARTIE JAMES*, 755 F.2d 414, 416 (5th Cir. 1985). The court in *Evergreen* dismissed an interlocutory appeal of summary judgment against two of the three remaining parties to the suit because the matter of the remaining defendant had yet been determined at the district level. *Evergreen*, 33 F.3d at 425. The circuit court correctly relied upon the decision in

Evergreen, which found that restriction of interlocutory appeals to "situations in admiralty cases where the liability issue has been finally determined, leaving open the only the question of damages" was proper. *Id.* at 425 (relying on the approach in *Miskiewicz v. Goodman*, 341 F.2d 828, 1965 AMC 648 (4th Cir. 1965)). Like *Evergreen*, where the final determination of the rights and liabilities of the parties were not yet decided, the matter of Respondent's liability *vel non* will not be determined until the Phase Two trial. R. at 2a; 3a n.2.

Not every interlocutory order is appealable under statute, but only those which determine rights and liabilities of the parties. *Miskiewicz*, 341 F.2d at 830. In *Miskiewicz*, the petitioner's interlocutory appeal was dismissed because the dismissal of cross-libels for lack of admiralty jurisdiction was not an appealable interlocutory order that 28 U.S.C. § 1292(a)(3) requires. *Id.* at 831. The court in *Miskiewicz* decided that because the issue before the court was not a final decree, it did not fall in the limited class of interlocutory orders made appealable by statute. *Id.* at 831. Like *Miskiewicz*, which appropriately dismissed the interlocutory appeal, the issue before the Court is not a form of final decree and should therefore be dismissed. R. at 2a; 3a n.2.

The Fourth Circuit has continued to follow the precedent set forth in *Evergreen* and *Miskiewicz* in subsequent cases such as *Pickle v. Char Lee Seafood, Inc.*, 174 F.3d 444, 1999 AMC 1840 (4th Cir. 1999). The court in *Pickle*, allowed for an interlocutory appeal under 28 U.S.C. § 1292(a)(1), but the court noted that Char Lee Seafood would not be able to rely upon 28 U.S.C. § 1292(a)(3) because the rights and liabilities of the parties had not been determined and the statute did not apply to procedural determinations such as the one under review. *Id.* n.1 at 448 (relying upon *Miskiewicz*, 341 F.2d at 830-31; also *Evergreen*, 33 F.3d at 424-25). Similar to the court's note in *Pickle*, the issue before this Court is not one of procedural determinations, rather, it involves an issue of jurisdiction determination, in which the rights and liabilities have not been determined. R. at 2a; 3a n.2. Thus, Petitioners' interlocutory appeal does not fall under the 28 U.S.C. § 1292(a)(3).

The circuit court correctly followed Fourth Circuit precedent in deciding that they lacked appellate jurisdiction pursuant to 28 U.S.C. § 1292(a)(3), and accordingly, that decision to dismiss should be affirmed.

B. The approach adopted by the Fifth Circuit is consistent with the intent that 28 U.S.C. § 1292(a)(3) was enacted.

The statute allowing for interlocutory appeals, taken in connection with the other parts of the section, indicates that Congress did not intend to make appealable any other interlocutory decrees in admiralty. *Schoenamsgruber v. Hamburg American Line*, 294 U.S. 454, 458, 1935 AMC 423, 426 (1935). The Court in *Schoenamsgruber*, determined that it would only consider final decrees on interlocutory appeal. *Id.* Like the Supreme Court decision in *Shoenamsgruber*, the circuit court correctly dismissed the interlocutory appeal in accordance with the intent of Congress in the inception of 28 U.S.C. § 1292(a)(3). R. at 6a.

28 U.S.C. § 1292(a)(3) exception has its origins in the once common admiralty practice of referring the determination of damages to a master or commissioner after resolving the issue of liability. *Chem One, Ltd. v. M/V Rickmers Genoa*, 660 F.3d 626, 638, 2011 AMC 2553, 2568 (2d Cir. 2011) (quoting *Becker v. Poling Transp. Corp.* 356 F.3d 381, 2004 AMC 637 (2d Cir. 2004)). Like the court in *Chem One*, the circuit court appropriately adhered to the underlying origins of 28 U.S.C. § 1292(a)(3), and in doing so, dismissed the interlocutory appeal. R. at 6a.

Congress intended 28 U.S.C. § 1292(a)(3) to permit parties to appeal the finding of liability on the merits, before undergoing the long, burdensome, and perhaps unnecessary damages determination. *Evergreen*, 33 F.3d at 424. *Evergreen* continues to say that the statute was primarily intended to avoid the expense and delay of a reference to compute damages, since it is always possible that the libelant may later turn out to have no right to recover at all. *Id.* (citing *Medomsley Steam Shipping Co. v. Elizabeth River Terminals, Inc.*, 317 F.2d 741, 742, 1963 AMC 1444, 1445 (4th Cir. 1963)). Similar to the petitioners in *Evergreen*, Petitioners may not have the right to recover at all, and that determination is appropriate first before moving forward. R. at 2a; 3a n.2. Accordingly, the circuit court appropriately dismissed the case for lack of jurisdiction under 28 U.S.C. § 1292(a)(3).

The circuit court conformed with Congress's intent in enacting the 28 U.S.C. § 1292(a)(3) exception, and therefore, this Court should affirm the circuit court's decision.

C. The approach adopted by the Fifth Circuit would be the most practical moving forward in regards to the appellate docket.

28 U.S.C. § 1292(a)(3) was not intended to clutter the federal docket with interlocutory odds and ends. *Evergreen*, 33 F.3d at 424. The court in *Evergreen*, which dismissed the interlocutory appeal pursuant to 28 U.S.C. § 1292(a)(3), noted that the proper development of the law over the long term requires immediate sacrifices. *Id.* at 425 (quoting *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 867 (1994)). Although dismissal of the interlocutory appeal had adverse financial results to the parties, the court in *Evergreen* properly considered the effect the judgment would have on how 28 U.S.C. 1292(a)(3) would be interpreted moving forward in the Fourth Circuit. *Id.* The circuit court opinion takes note of the potential additional costs associated with dismissing the appeal, but

appropriately followed the long term goal noted in *Evergreen* and appropriately dismissed. R. at 6a.

The decision of limitation to damages is not a decision determining the rights and liabilities of the parties. *Bucher-Guyer AG, v. M/V Incontrans Spirit*, 868 F.2d 734, 735 (5th Cir. 1989); see also *Burgbacher v. Univ. of Pittsburgh*, 860 F.2d 87, 88, 1989 AMC 149, 150 (3d Cir. 1988) (noting that to treat such rulings, although meaningful, as coming within 28 U.S.C. § 1292(a)(3) would make every substantial legal ruling in admiralty proceedings immediately appealable . . . such a construction would read too much into the statute). The court in *Bucher-Guyer* found that on its face 28 U.S.C. § 1292(a)(3) precludes appellate jurisdiction when liability of the parties has not yet been determined. Like the court in *Bucher-Guyer*, which dismissed the interlocutory appeal by sticking to the strict interpretation of 28 U.S.C. § 1292(a)(3), the circuit court complied with ultimate goal of minimizing frivolous admiralty interlocutory appeals and dismissed. R. at 6a.

The circuit court appropriately applied the Fifth Circuit's narrow approach to 28 U.S.C. § 1292(a)(3) as it is more practical moving forward in regards to the appellate level docket. Accordingly, this Court should affirm the decision to dismiss.

CONCLUSION

For the foregoing reasons, Respondent requests this honorable Court to affirm the decision of the Fourth Circuit Court of Appeals.