Fifth Circuit Court of Appeal
State of Louisiana

No. 25-CA-506 C/W 25-CA-507

VICTOR ALLEN AND PETER DEARING

VERSUS

ENTERPRISE MARINE SERVICES, LLC AND ASSOCIATED TERMINALS, LLC

C/W

MICHAEL BELLARD AND BRYAN GIROIR

VERSUS

ENTERPRISE MARINE SERVICES, LLC AND ASSOCIATED TERMINALS, LLC

ON APPEAL THE TWENTY-THIRD JUDICIAL DISTRICT COURT
PARISH OF ST. JAMES, STATE OF LOUISIANA
NO. 40,749 C/W 40,752, DIVISION "A"
HONORABLE JASON VERDIGETS, JUDGE PRESIDING

June 10, 2026

JUDE G. GRAVOIS

JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Jude G. Gravois, and Scott U. Schlegel

AFFIRMED IN PART, REVERSED IN PART

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FHW
SUS

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GRAVOIS, J.

Defendants, Associated Terminals, LLC, Associated Marine Equipment, LLC, and Ascot Insurance Company (collectively "Associated"), appeal the trial court's June 12, 2025 judgment which found Associated liable to Enterprise Marine Services, LLC ("Enterprise") for damages to an Enterprise push boat (the MV OVIDE J) and three Enterprise cargo barges. The damages were allegedly caused during Hurricane Ida on August 29, 2021 when Associated's crane barges, which were moored with other barges to a permanent dock owned and operated by American Commercial Barge Line ("ACBL"), broke away from the river bank as a unit (a "flotilla") and allided with the Enterprise vessels, which were moored in an anchored tier downriver.

Following a bench trial on March 17–21, 2025, the court found Associated negligent and liable for damages to Enterprise in the virile share of 30% liability and fault, as explained below, for failing to follow its hurricane preparedness plan, by not mooring its crane barges during the hurricane in the fleet called for in its hurricane preparedness plan, which was a proximate cause of the flotilla breakaway and Enterprise's damages.[1] The judgment awarded damages and interest to Enterprise totaling $928,098.31.[2] Associated was granted a suspensive appeal, which is now before this Court.

On appeal, Associated argues these assignments of error:

1. The trial court erred, as a matter of law, in holding Associated liable for the breakaway despite undisputed evidence that ACBL, as the fleeter, had the exclusive care, custody, and control over the crane barges and the fleeting facility.

2. The trial court erred in holding that Associated owed Enterprise a duty of care.

3. The trial court erred in establishing any causation between Associated's actions and Enterprise's alleged damages.

[1] Though not a defendant at trial, ACBL was found 60% at fault for Enterprise's damages. Enterprise was assessed 10% fault, a finding that Enterprise has not appealed.

[2] This figure represents Associated's 30% virile share ($708,810.17) of Enterprise's total damages ($2,362,700.55), plus $219,288.14 in statutory pre-judgment interest.

Specifically, the trial court erred in its allocation of 30% fault to Associated in the absence of any evidence linking Associated's conduct to the alleged damages.

4. The trial court erred in finding that Associated's crane barges collided or allided with Enterprise's vessels or barges.

5. The trial court erred in admitting Enterprise's speculative and unsubstantiated damage values.

6. The trial court abused its discretion in excluding the deposition transcripts of Kurt Kienitz and Victor Allen. Both were unavailable witnesses whose testimony established ACBL's exclusive control and liability, and negated Associated's fault.

7. The trial court erred in limiting Associated's ability to cross-examine Captain Michael Bellard, which prejudiced its ability to address each issue raised by Enterprise on direct examination, despite ample time to complete the trial.

Enterprise answered Associated's appeal, contending that the trial court erred as a matter of law in ruling that Enterprise's witness Gregory Watkins was not unavailable to testify at trial and, therefore, erred in not allowing the admission into evidence and use of his prior deposition testimony in lieu of his live testimony at trial. Enterprise contends that Mr. Watkins would have testified as a fact witness as to the amounts of maintenance and cure payments made by Enterprise; therefore, the court improperly failed to award Enterprise an additional $408,562.05 in damages, representing maintenance and cure paid to the Enterprise mariners, specifically: $13,055.00 in maintenance and $86,587.45 in cure paid to Michael Bellard; $18,340.00 in maintenance and $62,844.70 in cure paid to Peter Dearing; $18,690.00 in maintenance and $90,285.84 in cure paid to Bryan Giroir; and $18,340.00 in maintenance and $100,419.06 in cure paid to Victor Allen.

For the following reasons, we conclude that Associated's first four assigned errors regarding Associated's liability and fault are without merit. Accordingly, we affirm the trial court's 30% allocation of liability and fault to Associated for Enterprise's damages. However, we conclude that Associated's arguments in its fifth assignment of error regarding the amount of damages proven by Enterprise have merit, as discussed below. Accordingly, we reverse the court's $928,098.31

damages award in favor of Enterprise and against Associated. Regarding Associated's final two assignments of error regarding evidentiary rulings during trial, we conclude that the court abused its discretion in excluding the deposition transcripts of Kurt Kienitz and Victor Allen, but did not abuse its discretion in limiting Associated's ability to cross-examine Captain Bellard. However, as discussed below, the deponents' testimonies do not change Associated's virile share of fault.

Regarding Enterprise's answer to the appeal, we conclude that the trial court did not abuse its discretion in finding that Enterprise's witness Gregory Watkins was not unavailable to testify at trial and therefore did not err in not allowing the admission into evidence and use of his prior deposition testimony in lieu of his live testimony at trial. Accordingly, we conclude that Enterprise is not entitled to the requested relief of an award of reimbursement of the maintenance and cure it paid to its mariners.

FACTS AND PROCEDURAL HISTORY

Hurricane Ida began as a tropical depression in the western Caribbean Sea on August 26, 2021. Forecasters quickly identified the storm as likely to strengthen into a major hurricane which would impact southeast Louisiana, particularly the areas from New Orleans to Baton Rouge, including interests along the Mississippi River. Marine interests in the area, including ACBL, Enterprise, and Associated, monitored the development of the tropical depression as it formed and strengthened into Tropical Storm Ida and then into a hurricane over a period of several days. By August 27, 2021, the area was under Coast Guard alerts for the developing storm,[3] and hurricane preparedness steps were being taken by ACBL, Enterprise, and Associated.

[3] The Coast Guard's classifies its alerts as follows:

- Port Condition WHISKEY is a condition set by the COTP (Captain of the Port) when weather advisories indicate sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 72 hours.
- Port Condition X-RAY is a condition set by the COTP when weather advisories indicate sustained gale force winds (39–54

In August of 2021, Associated owned and operated at least 17 Gottwald crane barges in the lower Mississippi River. Those crane barges performed midstream stevedoring operations, which involves the loading and unloading of cargo to and from anchored vessels and barges. Eleven of the crane barges were stationed in Associated's northern division (above Reserve, Louisiana), including some at Associated's Convent, Louisiana, location. Those specialty barges consist of a crane with a boom mounted on a barge. Unlike hopper and tank barges, which carry bulk cargo and have shallow profiles of approximately 10–12 feet above the surface of the water, the Gottwald crane barges are tall, described variously as having profiles above the water line between 125 feet to close to 140 feet. The heel of the boom is approximately 78 feet above the deck. There are also additional structures on the deck. Associated's crane barges do not have their own propulsion systems. Associated relies on third parties such as ACBL and other fleeters in the area to move and fleet their crane barges when necessary.

ACBL owned and operated large barge fleeting operations in the Mississippi River at and near Convent, Louisiana. One fleet, known as the Convent fleet, was divided into northern and southern sections. A separate fleet, known as the Belmont fleet, was located approximately three miles south or downriver from the Convent fleet. Both fleets operated along the east bank of the Mississippi River. The fleets consisted of barges and push boats (motor vessels) capable of movement. ACBL's fleets were "closed," which meant that a barge or

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mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 48 hours.

- Port Condition YANKEE is a condition set by the COTP when weather advisories indicate that sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 24 hours.
- Port Condition ZULU is a condition set by the COTP when weather advisories indicate that sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 12 hours. A ZULU alert requires all river traffic to cease until the alert is given by the Coast Guard that conditions are safe to resume operations.

Evidence admitted into the record shows that the Coast Guard ordered cessation of traffic on the river within the New Orleans area (Port Condition ZULU) by 1400 hours (2:00 p.m.) local time on August 28, 2021.

other vessel had to have ACBL's permission to moor at ACBL's facilities, *i.e.*, to enter the fleet. The northern section of the Convent fleet included a barge servicing and repair facility known as the "Wash Dock." The Wash Dock consisted of barges tied end to end and then moored to pilings in the riverbank to form a permanent floating structure used to moor other barges and vessels, as well as to provide a permanent work platform to service barges.[4]

Enterprise owned push boats and red-flagged tank barges that transported chemicals on the Mississippi River, including the push boats MV OVIDE J and MV CHRISTINE, and their respective tows of two barges each. For Hurricane Ida, both of these vessels and their tows (along with other Enterprise barges) were fleeted in the southern section of ACBL's Convent fleet.[5]

Associated and ACBL had a long history of working with each other to fleet Associated's crane barges at ACBL's fleet locations when needed. Each company had hurricane preparedness plans, which were updated and promulgated to key personnel of both companies each year.[6] Among other things, the plans specified step-by-step actions to be taken as the Coast Guard instituted progressive alerts on the weather conditions that governed river traffic as storms approached. These plans included locations where specific barges were to be moored, and specific configurations of barges being moored. Pertinently, Associated's hurricane preparedness plan did not call for any of Associated's crane barges to be moored at the northern (the Wash Dock) or southern sections of ACBL's Convent fleet. Rather, Associated's plan provided for the fleeting of its crane barges at ACBL's Belmont fleet as follows:

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[4] The Wash Dock measured approximately 1,714 feet in length and 54 feet in width. *See In re Am. Com. Barge Line, LLC*, No. CV 22-502, 2023 WL 2742158, (E.D. La. Mar. 31, 2023).

[5] The southern section of ACBL's Convent fleet was an anchored tier, which was not tied to the shoreline, but rather is held in place by a large anchor connected to a buoy to which the barges/vessels tied off.

[6] There was testimony that Associated and ACBL shared their hurricane preparedness plans with each other, and were generally aware of the provisions in each plan.

FLEETING OF MIDSTREAM BARGES

Midstream North Midstream barges shall be positioned as follows:

- Maximum of six barges fleeted with ACBL at their Belmont fleet.
- Inside the finger pier at Globalplex
- Ingram fleet as allowed by Ingram
- St. John Fleet as available/needed

(Underlining provided.)

ACBL's hurricane preparedness plan called for two of Associated's crane barges to be fleeted at ACBL's Convent Wash Dock, in a "duck pond" configuration (where empty low-profile barges are placed around the two crane barges to act as a buffer). ACBL's plan also called for up to six of Associated's crane barges to be fleeted at ACBL's Belmont fleet in a specific configuration, but not a duck pond configuration.

In reality, however, for Ida, five of Associated's crane barges, along with other barges, were moored at ACBL's Convent Wash Dock, without the surrounding duck pond. None of Associated's crane barges were moored at ACBL's Belmont fleet. During the hurricane, ACBL's Wash Dock, along with the attached Associated crane barges and other attached barges, broke free of the Wash Dock's permanent moorings to the riverbank, and floated freely downriver as a "flotilla," eventually coming into contact with the mooring lines and/or the barges/vessels in the southern section of ACBL's Convent fleet, in a "domino" effect. This breakaway impacted Enterprise's MV OVIDE J and its tow, along with other Enterprise barges contained within that fleet. After the allisions,[7] with the storm raging around him, the captain of the MV OVIDE J, Michael Bellard, decided to abandon ship with his three crewmembers, after his vessel, along with its tow, ran aground on the

[7] The fundamental difference between an allision and a collision is the status of the objects involved. A collision occurs when two moving objects strike one another. An allision occurs when a moving object strikes a stationary object (like a bridge, a pier, or an anchored boat).

riverbank. The four mariners aboard the MV OVIDE J sustained injuries while abandoning ship. In addition to the MV OVIDE J, other Enterprise barges moored in the same fleet as the MV OVIDE J sustained significant damages as a result of the allisions. Eventually, the Wash Dock, along with the five Associated crane barges and the other attached barges, also ran aground on the riverbank, where they were recovered the next day.

Litigation ensued. In March of 2022, two of the four mariners aboard the MV OVIDE J, Victor Allen and Peter Dearing, filed suit in the 23rd Judicial District Court (St. James Parish) against Enterprise and Associated for personal injuries, medical expenses, lost wages, maintenance and cure benefits, and other damages. Another suit by the other two MV OVIDE J mariners, Captain Bellard and Bryan Giroir, was also filed in that same court. In due course, these suits were consolidated. Previously, ACBL had filed suit in the United States District Court for the Eastern District of Louisiana, seeking exoneration from or limitation of liability as a result of the incident.[8] According to the record, all parties except Associated participated in a settlement conference in the federal court matter that resulted in settlements of all the claims of the mariner plaintiffs against ACBL and Enterprise, with the mariner plaintiffs reserving all rights to claims against Associated. Shortly before trial, the mariner plaintiffs and Associated reached a settlement agreement. Enterprise also settled its claims against ACBL, reserving all rights to claims against Associated. Enterprise filed a cross-claim against Associated in the consolidated state court suits, asserting claims against Associated for damages to the MV OVIDE J and several of its barges, as well as contribution for damages incurred by the mariners for which Enterprise was liable.

Ultimately, the matter proceeded to a bench trial on March 17–21, 2025 in the 23rd Judicial District Court of Enterprise's claims against Associated, which consisted of reimbursement of damages to the MV OVIDE J and several barges, and reimbursement for maintenance and cure paid to the mariner plaintiffs. After taking the

[8] *See In re Am. Com. Barge Line, LLC*, *supra*, n.4.

matter under advisement, the court signed a final judgment and reasons for judgment on June 12, 2025. Therein, the court found ACBL 60% liable for the incident, Associated 30% liable, and Enterprise 10% liable. The basis of Associated's liability was its independent negligence in failing to follow its hurricane preparedness plan, which did not call for any of its crane barges to be fleeted at the Convent Wash Dock, but rather which called for up to six of its crane barges to be fleeted at ACBL's Belmont fleet.[9] The judgment awarded Enterprise itemized damages on barges Enterprise 378, Enterprise 341, and Enterprise 349B,[10] and the MV OVIDE J, totaling $2,362,700.55, of which Associated's virile 30% share was $708,810.17. The judgment also awarded pre-judgment interest of $219,288.14, for a total judgment in favor of Enterprise against Associated of $928,098.31.

Associated was granted a suspensive appeal. Upon lodging of the appellate record with this Court, Enterprise answered the appeal.

FIRST ASSIGNMENT OF ERROR

Liability of Associated

Associated first argues on appeal that the trial court erred, as a matter of law, in holding Associated liable for the breakaway flotilla despite undisputed evidence that ACBL, as the fleeter, had the exclusive care, custody, and control over the crane barges and the fleeting facility. Associated argues that ACBL had the exclusive obligation to secure its fleeting facility, including the sole responsibility to confirm that the Wash Dock was sufficiently moored in advance of the storm. Associated argues that the court erred when it imputed such responsibility to Associated.

Summary of trial testimony

Daniel Talley, Sr. testified that at the time of Hurricane Ida, he had worked for Associated for 47 years, starting as a deckhand,

[9] Enterprise's 10% fault was premised on its denying permission to the MV OVIDE J's captain to proceed north to safe harbor nearer or above Baton Rouge. Enterprise has not appealed its percentage of fault.

[10] The judgment denied Enterprise's claim for barge Enterprise 319.

progressing to oiler, crane operator, supervisor, crane manager, and operations manager for his final sixteen years.[11] He had been operations manager in Convent for nine years. He acknowledged that Associated has had a hurricane preparedness plan in place for many years, formulated by the Risk Department. The plan was sent to all department heads, but he just happened to get a copy from Jerry Ryan, his supervisor. He only glanced through it, because all of his guidance came from Mr. Ryan. He and Mr. Ryan never discussed the plan. He did not know if the plan was physically on board the crane barges so that the crane operators could see it. He did attend staff meetings where hurricane preparation was discussed. He had scanned the parts of the plan pertaining to the cranes, for his responsibility and accountability, focusing on Convent.

Mr. Talley read Associated's plan on the stand. He had never noticed that the plan said that Associated "shall" put up to six crane barges at ACBL's Belmont Fleet. He did not think that was where ACBL wanted his assets positioned in advance of hurricanes. He had always been under the impression that ACBL alone decided where they put the rigs. He had never reviewed ACBL's hurricane preparedness plan.

Mr. Talley said that he got a call from Jerry Ryan saying that the rigs would be going to ACBL's Wash Dock. He was instructed to put the cranes at the Wash Dock and that's what he did. He did not tell anyone that they needed to move the crane barges to the Belmont fleet, which was three miles further south and farther from their operations. He did not know how the plan said to position the barges at Belmont. He had never been to the Belmont fleet. He further testified that during Ida, he was not actually working at Convent, but rather was working at Globalplex in Reserve, another fleeter's location.

[11] Mr. Talley, Sr. retired in 2024 and was succeeded in the position by his son, Daniel Talley, Jr.

Daniel Talley, Jr. testified that he was the current operations manager of Associated.[12] He had managed three Gottwald cranes during Ida. He personally had no say in where they were fleeted for Ida. At the time, he got his orders from his father. One of his assets was stationed in Convent; the other two were fleeted at Globalplex in Reserve.

Mr. Talley, Jr. said that he received Associated's hurricane preparedness plan in 2021. He reviewed it to see what part he would have to play in the process. He did not know if the plan changed from year to year because it was a very long document. His job was to take orders from his supervisor. In the event of a hurricane, all guidance came from the top down, and crane managers were given, and did not make, fleeting arrangements. He knew that four other crane barges were at the Wash Dock. He had never been to the Belmont fleet although he knew where it was.

Mr. Talley, Jr. emphasized that it was not his decision where to place the barges. He had never heard the term "duck pond," nor had he ever seen ACBL's hurricane preparedness plan.

Forrest Russell IV was employed by Associated as a crane manager during Hurricane Ida. The F WALKER and GLENN S were his crane barges. As a crane manager, he scheduled people, and ordered supplies, etc., but did not work directly on the barges.

As Mr. Russell stated in his deposition, he may have seen Associated's hurricane preparedness plan a long time ago, but did not recall and did not remember the plan. He was not aware that it said to fleet Associated's crane barges at the Belmont fleet in the event of a hurricane. He did not know that Associated's plan required the five crane barges at the Wash Dock to be fleeted at the Belmont fleet. He was on the GLENN S when it was fleeted at the Wash Dock by ACBL, to make sure that hurricane preparations went properly. This did not

[12] Mr. Talley, Jr. was 45 and was the son of Daniel Talley, Sr. He, too, had worked his way up at Associated from deckhand, oiler, crane operator, supervisor, production manager, crane manager, and was currently operations manager.

include inspecting ACBL's mooring arrangements, over which he had no discretion.

Ryan Phillips was called as a witness for Enterprise. Both during Ida and at the time of trial, he was employed by ACBL. Mr. Phillips had worked at their predecessor, AEP, beginning in 2006, and continued working at ACBL when they bought AEP in 2015. He was currently in charge of barge movements within the fleet as director of Gulf Fleet logistics, a position he had held for approximately four years. In August of 2021, Associated was ACBL's largest customer in the Convent area, as their stevedoring operations ran 24/7. Mr. Phillips did not go to ACBL's Wash Dock prior to Ida. He would not expect his customers to know the strength capability of his fleet in terms of the individual tiers, because that was ACBL's responsibility.

Mr. Phillips was familiar with ACBL's hurricane preparedness plans from 2016 (their first after they purchased AEP) to 2021. The substance of the successive plans were very similar to the plan they had at AEP. He had shared ACBL's hurricane preparedness plan in 2017 with Associated's Jerry Ryan, and probably with Daniel Talley, Sr. as well. The plan directed that six crane barges would be fleeted at Belmont, and that two would be fleeted at the Wash Dock (in a duck pond configuration). The plan had no material changes from 2017–2021. He was pretty sure that Mr. Ryan had shared Associated's plan with him because that was customary. He was not an engineer and so did not have information about the crane barges' weight load or wind interaction. He did not know the basis for the plan, or why ACBL's plan called for only two crane barges to be placed at the Wash Dock.

Mr. Phillips testified that ACBL and Associated had a contract that provided, in his words, "at any given time, we [ACBL] have to fleet their cranes that are working in the area, and I think we have to give them room for up to eight cranes in the contract." He said that Associated does not tell them how to move the barges, but they could communicate what they need, and if ACBL could do it, they would. ACBL was in the best position to determine what they can offer customers, including where they are going to place equipment.

Associated's rigs were told that they would be fleeted at the Wash Dock, because that's where they had been fleeted for the past three years.

Mr. Phillips testified that for at least three prior hurricane seasons, Associated's crane barges had been configured the same as they were for Ida, moored together at the Wash Dock, with no duck pond of empty hopper barges surrounding them. He was uncertain why the change was made in practice (but not in the plan), except to say that "if you're trying to finish up a ship, you want to get the ship finished up." He had no say so in Associated's stevedoring operations, but only performed support activity at their request. He agreed it was a joint decision with Mr. Ryan and Mr. Talley, Sr. to fleet the cranes at the Convent Wash Dock fleet; for the past couple of years, that's where they had been put. No one from Associated had objected to the configuration of the crane barges at the Wash Dock.

Mr. Phillips testified that in retrospect, he should have followed ACBL's plan. When Hurricane Ida was approaching, he knew that the Wash Dock was not set up in accordance with ACBL's plan. He said that Mr. Ryan went to the Wash Dock and also would have known that.

On the evening of August 27, when Associated told ACBL that its rigs were ready to be moved, the river alert was at "Yankee," so movement on the river was still possible. Mr. Phillips stated that ACBL probably could have helped Associated move their crane barges to Belmont. Moving there was at least two hours round trip per crane, and would have been more time consuming than using the Wash Dock.

Mr. Phillips' level of knowledge of crane barges was small. He would have deferred to Associated, who had superior knowledge regarding any wind forces that their cranes may create. To his knowledge, ACBL received no additional precautions from Associated that they should have taken with the crane barges in hurricane or high wind circumstances.

Anthony Collins was employed by Associated during Ida as Vice President, Risk Manager. Part of his job was to formulate hurricane

preparedness plans for Associated. The purpose of the plan was to provide a general guideline as to how to secure the various crane barge assets in the event of a hurricane, as well as other assets. The hurricane preparedness plan for 2021 went to all heads of all departments, and Jerry Ryan had a copy of it. Mr. Collins expected that the plan would "filter down" and all workers would be aware and informed of the plan. They used it frequently, not just for Ida. He and Mr. Ryan (when he was at AEP) formulated the plan to fleet six crane barges at Belmont. This was the plan in place when Ida approached. He agreed that the plan says the cranes "shall" be placed at Belmont. He relied on Jerry Ryan to implement the plan he had formulated.

Mr. Collins testified that he did not know why the decision was made to move those cranes to the Wash Dock, whether it was fleet capacity or what other considerations factored into that. But "we do know this: we operate until the fleet closes or they tell us they're going to close, and then they [ACBL] decide where they're going to put the assets." Associated tries to limit moving the cranes, because there is tremendous cost in moving those assets. He echoed other witnesses' testimonies that they had used this configuration before, and there was no indication there was any flaw to the plan until this event took place.

Jerry Ryan testified that he was currently employed by Associated as vice president of Operations, supervising the operations of Associated's crane barges. He managed their midstream operations. Mr. Ryan participated in hurricane preparation planning for Associated. The plan was not rigid, as these events called for discretion to evaluate hour by hour situations with the storm, river conditions, and impending weather. Also, Associated depended on third parties such as ACBL to implement its hurricane plans.

When hurricane impacts were imminent in the area, Mr. Ryan said that the process was to first initiate calls to its service providers and available fleets to solicit space and horsepower to move their crane barges. For Ida, he had to find fleeting for all 11-12 crane barges. Only ACBL gave permission, and said it could take five cranes, but initially not saying where they would be fleeted. At some point, ACBL

designated the Convent Wash Dock fleet, and never offered space in its other fleets.

Mr. Ryan received a confirmation call from Ryan Phillips at ACBL that his rigs had been fleeted. While Mr. Ryan inspected the lines securing Associated's crane barges to the Wash Dock, he never went on the Wash Dock. And he did not inspect the Wash Dock's mooring because that was beyond his knowledge or expertise, and that was not part of his job at Associated. He did not know why ACBL positioned the barges the way it did. ACBL was considered to be an expert fleeter, through its own history, track record, and reputation. The Gottwald cranes were unique and ACBL had the foremost experience with these rigs. Associated's Convent fleet of crane barges became the largest operating fleet of Gottwalds in the world. He had no reservations about fleeting them with ACBL. He had fleeted them there many times, including at the Wash Dock, and never had an adverse incident other than this one for Ida.

Mr. Ryan knew he reviewed Associated's hurricane preparedness plan before Ida. He did not specifically recall what it said about the number of cranes and how they would be moored. He stated: "I knew there was some reference to cranes being at Belmont but on those plans, as many, many, many of them had been issued over the years, they all look similar, that was the common reference." He was not familiar with the term "duck pond."

When Mr. Ryan was preparing for Ida, he did not go back and look at the ACBL plan. The process was, ACBL would put his crane barges somewhere, *then* he would review it. The fleet was dynamic, a constant moving configuration of barges. Therefore, any proposal would have been generic. Mr. Ryan could render custody of his assets to ACBL or not, but he could not tell them how to configure the fleet. His expectation was that if ACBL could facilitate Belmont, that's where his assets would be. He disagreed that five rigs at the Wash Dock was a violation of both plans, as the plans were guidelines, not rigid.

Scott McClure, qualified as an expert naval architect and engineer, was called by Enterprise. He reviewed ACBL's United States

Army Corps of Engineers permit for the Wash Dock, which allowed for up to six tiers of hopper barges. The permit did not address crane barges, and in his opinion, did not allow the mooring of crane barges. Mr. McClure reviewed the moorings in position on August 29 and found they were sufficient to hold the Wash Dock and up to 60 hopper barges, because the hopper barges had low profiles and much less wind drag and interaction than crane barges with their greater height.

Mr. McClure reviewed the river gauges at different times to understand how the hurricane affected the river's flow. He also reviewed NOAA tide information as a function of storm surge information. He used this information to calculate the drag that the existing river conditions was going to impose on the five crane barges and the Wash Dock. His projection was that winds were going to be over 80 mph, and maybe as much as 100 miles per hour.

Mr. McClure used those wind calculations to determine the force that would be applied to the existing structure as positioned by Associated and ACBL. The drag (water) caused by the river current was only about 4% of the total drag. Wind drag was 96%.[13] He concluded that the Wash Dock was never meant to be a mooring place for crane barges. This was confirmed by ACBL's plan and Associated's plan, neither of which showed five crane barges moored there. Failure to follow their plans was the cause of the breakaway, he found. Though he and Associated's counsel disagreed about the actual wind speed at the Wash Dock during Ida, Mr. McClure pointed out that "the whole thing still broke away, so that's really what the issue is."

Analysis

Fleet operators in the Lower Mississippi River are subject to federal regulations that govern mooring requirements. 33 C.F.R. §

[13] Weather expert Joseph G. Spain testified that using hindcasting, which is the analysis of data from past weather events, the top winds experienced at mile marker 158 where the Wash Dock was located were from the northeast at 52-58 mph, with gusts at 76 mph, and those lasted for only one hour, which was lower than forecasted. The river rose approximately 2.98 feet during the storm. As a whole, St. James Parish never experienced hurricane force winds during Ida, according to Mr. Spain's data.

165.803. The regulations define a fleet to include one or more tiers [of barges] and define fleeting facilities as "the geographic area along or near a riverbank at which a barge mooring service, either for hire or not for hire, is established." *Id.* at § 165.803(a)(3) and (4). The regulations apply to the "waters of the Mississippi River between miles 88 and 240 above Head of Passes …." *Matter of Magnolia Fleet, LLC*, No. 2:22-CV-00504, 2023 WL 6121983, at *3 (E.D. La. Sept. 19, 2023).

Associated asserts that maritime law is well established that when a barge is delivered to a fleeter, a bailment relationship is established, and the fleeter as bailee has a duty to exercise reasonable care of the barge.[14] Also, a bailee of barges is "required to see to it that the barges were adequately moored at all times."[15] Therefore, Associated argues, it had no control over where ACBL fleeted its crane barges, and also no responsibility for the mooring lines/configuration employed by ACBL to secure its crane barges.

The above contentions are not disputed by the parties, and constituted findings of law by the trial court.[16] ACBL was found 60% at fault for the breakaway, in part for not following its own hurricane preparedness plan, which called for the mooring of only two crane barges at the Wash Dock, and also for failing to adequately moor the Wash Dock in accordance with statutory requirements. ACBL's fault also extended ostensibly to mooring of the crane barges at the Wash Dock, which was not within the scope of ACBL's fleeting permit with the United States Army Corps of Engineers.

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[14] *See Supreme Rice, L.L.C. v. Turn Servs., L.L.C.*, 545 F.Supp.3d 416, 423 (E.D. La. 2021) (citing *Dow Chem. Co. v. Barge UM-23B*, 424 F.2d 307, 311 (5th Cir. 1970) (wharfinger (fleeter) was "a bailee for hire").

[15] *Dow Chemical Co. v. Barge UM-23B*, 424 F.2d at 311.

[16] "The testimony presented established that ACBL is the preeminent fleeter in this area of the river. Thus, ACBL is in the best position to determine what it is capable of accommodating, and its customers rely on that expertise. The undisputed testimony of ACBL' s own personnel confirms that such responsibilities to fleet and ensure adequate moorings remained with ACBL at all times, and that ACBL did in fact undertake to assume and accepted those responsibilities following delivery of the crane barges in the days leading up to Hurricane Ida." Reasons for Judgment. These conclusions were supported by the testimonies of the parties as well as expert witnesses for Enterprise and Associated.

However, the court found that Associated's failure to follow its own hurricane preparedness plan constituted *independent negligence* that occurred prior to ACBL's custody and control of the crane barges. Specifically, the court found that Associated failed to follow its hurricane plan, which did not call for any of its crane barges to be moored at the northern and southern sections of ACBL's Convent fleet, but rather provided that up to six crane barges "shall" be moored at ACBL's Belmont fleet in the event of a hurricane.[17]

Associated argued at trial, and on appeal, that it had no control over where ACBL chose to fleet its crane barges, and therefore it was not liable for the breakaway. It also argued that its hurricane preparedness plan was merely a "guide" which would advise, but not require, where and in what configuration its crane barges were fleeted.[18] It further argued that in the last three years or so (before Hurricane Ida), ACBL had fleeted more than two of its crane barges, and up to five, at the Wash Dock during past hurricane events with no negative consequences; as such, it felt secure about the same arrangement during Ida.

The evidence admitted at trial showed that key personnel at both Associated and ACBL had a startling lack of knowledge about the specifics of their hurricane preparedness plans, such that it cannot even be said that the plans were used for guidance. Rather, the guiding standard seemed to be past experience, convenience, and financial expediency. It is apparent from the evidence admitted at trial that the crane barges were fleeted at the Wash Dock, rather than at ACBL's Belmont fleet three miles downriver, because the Wash Dock was closer to the location of Associated's crane barges' midstream stevedoring operations, which according to Associated witnesses, occurred "24/7." Therefore, Associated could resume regular

[17] Of note, ACBL's hurricane preparedness plan set forth the duck pond mooring configuration at the Wash Dock, which placed two crane barges within a perimeter of hopper barges on all sides, and which was not used at the Wash Dock during Ida.

[18] Associated's hurricane preparedness plan stated: "Although it is impossible to consider all contingencies, this plan should serve as a guide for all locations in the event of a hurricane or tropical storm." (*See* testimony of Daniel Talley, Sr., for Associated.)

operations faster and cheaper after the storm passed by fleeting at the Wash Dock, rather than by fleeting at the Belmont fleet.[19] Furthermore, multiple crane barges had been fleeted at the Wash Dock several times in the immediate past during weather events with no breakaways.

The Louisiana manifest error standard of review is applicable in general maritime and Jones Act cases brought in state court under the "saving to suitors" clause. *Milstead v. Diamond M Offshore, Inc.*, 95-2446 (La. 7/2/96), 676 So.2d 89. Under the manifest error standard of review, in order to reverse a factual determination, an appellate court must find: (1) a reasonable factual basis does not exist in the record for the finding; and (2) the record establishes that the finding is clearly wrong or manifestly erroneous. *Soudelier v. PBC Mgmt. Inc.*, 21-744 (La. App. 5 Cir. 12/21/22), 355 So.3d 135, 140, *writ denied*, 23-0084 (La. 3/28/23), 358 So.3d 516.

Considering all of the testimony from both fact and expert witnesses, we conclude that the trial court did not commit manifest error and was not clearly wrong in its conclusion that Associated's independent negligence in failing to follow its hurricane preparedness plan was a cause in fact of the breakaway of the Wash Dock. Associated's own personnel were largely unfamiliar with its hurricane plan provisions and arrangements such that it cannot be said that it provided any guidance at all. Further, the plan's fleeting arrangements conflicted with Associated's stated desire to resume stevedoring operations as soon as possible after the storm. Accordingly, we affirm the court's 30% assessment of liability and negligence to Associated. This assignment of error is without merit.

SECOND AND THIRD ASSIGNMENTS OF ERROR

Duty owed by Associated and Causation

In its second assignment of error, Associated argues that the trial court erred in finding that it owed a supervisory duty to Enterprise.

[19] There was testimony that the trip to Belmont from the barges' midstream locations took about two hours, which was considerably more than to the nearby Wash Dock.

Associated argues that the court's "contrary reasoning" effectively created a nonexistent duty requiring barge owners like Associated to supervise or verify ACBL's hurricane preparations, including the security of ACBL's mooring arrangements.

In its third assignment of error, Associated argues that the trial court erred in finding that the evidence established any causation between Associated's actions and Enterprise's alleged damages. Specifically, it argues the court erred in its allocation of 30% fault to Associated in the absence of any evidence linking Associated's conduct to the alleged damages.

Maritime tort law is governed by general principles of negligence law. *In re Signal Intern., LLC*, 579 F.3d 478, 491 (5th Cir. 2009). A maritime tortfeasor is therefore "accountable only to those to whom a duty is owed." *Id*. The type of duty owed "is measured by the scope of the risk that negligent conduct foreseeably entails." *Id*., quoting *Consol. Aluminum Corp. v. C.F. Bean Corp.*, 833 F.2d 65, 67 (5th Cir. 1987), *cert. denied*, 486 U.S. 1055, 108 S.Ct. 2821, 100 L.Ed.2d 922 (1988). Foreseeability is measured by "whether the harm that does occur is within the scope of danger created by the defendant's negligent conduct." *Id*. In assessing the scope of danger, courts look to the "terms of the 'natural and probable' risks that a reasonable person would likely take into account in guiding her practical conduct." *Id.* at 491–92. This includes "not only those [natural] forces which are constantly and habitually operating but also those forces which operate periodically or with a certain degree of frequency." *Id.* at 492 (quoting *Republic of Fr. v. United States*, 290 F.2d 395, 400 (5th Cir. 1961), *cert. denied*, 369 U.S. 804, 82 S.Ct. 644, 7 L.Ed.2d 500 (1962)). A duty was owed if the harm Enterprise and its vessels incurred "was a harm of the general sort to an entity of a general class that a reasonably thoughtful person might have anticipated to result from" Associated and ACBL's alleged negligence. *Id.* at 492.

The owner of a barge involved in a breakaway from a fleet can only be held liable if a fault or unseaworthy condition of the barge *or other independent negligence of the owner caused or contributed to*

causing the breakaway. *M/V Admiral Bulker v. United Bulk Terminals Devant*, 397 F.Supp.3d 826, 836 (E.D. La. 2019); *Conagra, Inc. v. Weber Marine, Inc.*, CIV.A.97-1019, 2000 WL 943198, at *5 (E.D. La. July 7, 2000); *see also*, *Dow Chemical Co. v. Barge UM-23B,* 424 F.2d 307, 311-12 (5th Cir. 1970). Contrary to Associated's assertions in its brief that the trial court created a new or expanded upon an existing maritime obligation, the court's reasons for judgment, taken as a whole, clearly state that the basis for Associated's liability to Enterprise was its independent negligence in failing to follow its own hurricane preparedness plan, which negligence occurred before and independently of any action of ACBL in the fleeting of the crane barges. Indeed, the record is clear that Associated's key personnel failed to consult or be guided by its hurricane preparedness plan, or to discuss the plan's provisions with ACBL at any time during this event.

The existence of hurricane preparedness plans and the requirement that maritime interests such as Associated and ACBL have them in place squarely addresses the dangers caused by inadequately secured assets during a hurricane event. The dangers of breakaway barges to interests along the river is well known, as shown by jurisprudence, not only to the assets and personnel of owners such as Associated and ACBL, but also to third party maritime interests along the river, as well as civic infrastructure such as bridges.

In its reasons for judgment, the trial court stated that Associated was liable to Enterprise for failing to "supervise" the placement of its assets in ACBL's fleet. Associated argues that this is contrary to admiralty law, as noted above, conferring complete responsibility to the fleeter of barges and vessels once they are tendered and accepted into the fleet.

Written reasons for judgment form no part of the judgment, and appellate courts review judgments, not reasons for judgment. *Perry v. Emps. Ins. of Wausau*, 24-535 (La. App. 5 Cir. 8/6/25), 421 So.3d 994, 1001, *writ denied*, 25-01137 (La. 11/19/25), 420 So.3d 1185. Judgments are often upheld or reversed on appeal for reasons and on bases different than those assigned by the trial judge. *Id.* The written

reasons for judgment are merely an explication of the trial court's determinations. They do not alter, amend, or affect the final judgment being appealed. *Id.*

We recognize that the court did use the word "supervise" in this portion of its written reasons. But reading this section of the written reasons for judgment as a whole, it is apparent that the court did not create a supervisory duty and impute it to Associated. Instead, the court found the evidence supported a finding that Associated did have the ability to provide input to ACBL regarding where its assets would be moored in the fleet during the storm. First, this is borne out by the hurricane preparedness plans themselves. Both Associated and ACBL's plans called for mooring locations and positions of Associated's crane barges in ACBL's fleet for a hurricane. The evidence showed that these plans were each formulated with input from each other over the course of their lengthy relationship. While all witnesses who testified regarding this issue agreed that ACBL would have *the final say* regarding where the crane barges were placed, there was no testimony that Associated could not object to the placement of its crane barges at the Wash Dock, or that it was prohibited from requesting that the crane barges not be placed at the Wash Dock, so as to be consistent with Associated's hurricane preparedness plan. The fact that Associated's plan called for the fleeting of up to six crane barges at ACBL's Belmont fleet is compelling evidence that Associated understood that the Wash Dock was not an adequate place to moor them, past years notwithstanding. The testimonies are clear that Associated and ACBL simply did not discuss the matter for Ida, as they were guided not by the plans, but by past practices and the desire to fleet the crane barges as near to the location of their operations as possible. The conduct of Associated that was a cause of Enterprise's damages was its independent negligence in this regard.

It also bears pointing out at this juncture that ACBL was found 60% at fault to Enterprise, twice the percentage of Associated, for not only failing to comply with *its* hurricane preparedness plan, but also for the failure of its permanent Wash Dock moorings, and ostensibly for violating its Army Corps of Engineers permit by fleeting crane barges

at the Wash Dock. This difference in assessed fault recognizes that ACBL's negligence was greater than Associated's. It not only did not follow or consult its own hurricane preparedness plan, but it also moored the cranes to a structure not designed nor permitted to moor them during a hurricane event. Furthermore, Associated could have chosen to reject ACBL's plan and decision to fleet its crane barges at the Wash Dock, as not being consistent with its own hurricane preparedness plan. It neglected to do so.

These assignments of error are without merit.

FOURTH ASSIGNMENT OF ERROR

Whether Associated's crane barges allided with Enterprise's vessels

In this assignment of error, Associated argues that the trial court further erred in finding that Associated's crane barges collided or allided with Enterprise's vessels or barges. Associated argues that the timing of the breakaway, as testified to by the captain of the MV CHRISTINE, showed that the breakaway barges that struck the MV OVIDE J's anchored tier occurred prior to the flotilla's approach.

Captain Bellard of the MV OVIDE J testified that he witnessed the flotilla drifting south right after it broke its permanent moorings. He saw it strike the tier of barges anchored immediately above him, which caused them to break apart, producing 20–30 barges floating freely in the river. Those barges drifted south and struck the anchor of the barge tier in which the MV OVIDE J and its two-barge tow was anchored, causing it, likewise, to break away. Captain Bellard testified that this event unfolded over a matter of only minutes.

Captain Kelly Sauerwin, Jr. was employed by Enterprise during Ida and captained the MV CHRISTINE, which was in the same anchored tier (with its tow) as the MV OVIDE J during the storm. On August 29, the tier he was in broke away. The MV CHRISTINE had five video cameras, two facing forward, that captured some of the action. At the time, he did not see the flotilla go by because visibility was hard with the wind and the rain. He knew when the MV OVIDE J abandoned ship because Captain Bellard called it out on the VHF radio.

He later found the MV OVIDE J pushed into the bank with its port and center engines full ahead, described as "wheel washed." He and his crew rescued the MV OVIDE J and its tow.

The deposition of Captain Brian Ward, who had been a captain with the fleeter Turn Services during Ida, was introduced into evidence. During Ida, Captain Ward was on the river in Convent in a Turn boat about 60 feet from the Wash Dock. Captain Ward saw the Wash Dock break away from its moorings to the bank, with the crane barges still attached to it as one unit. He saw the Wash Dock with the attached crane barges go about 1000 feet downriver; in that space, he did not see it hit anything. Prior to the Wash Dock breaking away, Captain Ward testified that he did not see barges or anything else hit the Wash Dock, and he did not hear of any breakaways in the vicinity.

When Captain Ward saw the Wash Dock break away, he let everyone know via the radio. He did not hear anyone else on the radio announcing that the Wash Dock had broken away. He did not see the flotilla hit anything. About twenty minutes later, he saw barges coming past him on the outside, about 30 feet from him, flipping; that's when he got off his boat.

Captain Ronald Campana, called by Associated as an expert in marine safety, vessel operation/navigation, fleeting and mooring arrangements, reviewed his expert report, prepared in 2023, for the federal court litigation. He opined that ACBL's mooring lines were inadequate and violated various permits under the Levee Board, the U.S. Army Corps of Engineers, and the Coast Guard.

In preparation for his testimony, Captain Campana viewed video from the MV CHRISTINE, which shows the flotilla approaching. In his opinion, it was clear that the flotilla just sailed right by. He saw some empty barges make contact with the Associated barges. The empty cargo hopper barges were just floating freely in the river. In his opinion, the barges in the tier above the MV OVIDE J's tier broke out before the crane barges came down the river. He did not know where they broke from. Barges tiers were breaking all over the river. Over

400 barges broke loose during that storm. Based on his review, the crane barges did not come near the MV OVIDE J.

Marc A. Fazioli was tendered by Enterprise as an expert in marine safety and navigation. He used the Mississippi River Traffic Information System ("MRTIS") system to give historical data on which vessels were operating on the river during this time. He used August 29, 2021 at 1800 hours (6:00 p.m.) to track movement of the MV OVIDE J and see who else was moving around at that time. The MV OVIDE J's radar picked up the flotilla separating from the bank. The MV OVIDE J's cameras show the entire Wash Dock with rigs attached coming toward the MV OVIDE J and the MV CHRISTINE.

He testified that the flotilla struck the lead tier of the MV OVIDE J. The tier containing the MV OVIDE J broke free when it was struck by the ACBL flotilla. The MV CHRISTINE was on the opposite side of the floating tier. The MV OVIDE J was using its engines to try to control the situation when it was struck free. No one would expect the MV OVIDE J to control the entire tier, though it was clear that the captain was trying to do so.

Mr. Fazioli reviewed Associated's plan and concluded that its failure to follow its own hurricane plan was a cause of the breakaway. Had Associated done an additional risk assessment of fleeting at Convent, he would not have been critical of Associated. But Associated chose Convent over Belmont without the additional assessment. That was not compliant with its responsibilities under the Code of Federal Regulations, in his opinion.

After analyzing radar imaging, Mr. Fazioli said that Captain Bellard's recollections of the breakaway sequence differed from the radar images. Captain Bellard testified that the hopper barges were already beginning to break away before the crane barges came down, but Mr. Fazioli said that this was not what the radar showed.

Considering all of the testimonies and evidence, we cannot say that the trial court committed manifest error or was clearly wrong in its finding that the flotilla impacted the barge tiers above the MV OVIDE

J, which in turn impacted its tier, causing its breakaway and damages. The fact that the flotilla may not have directly struck the MV OVIDE J itself is of no moment, because the evidence shows that the flotilla caused the breakaway in the immediate area of the MV OVIDE J. This assignment of error is without merit.

FIFTH ASSIGNMENT OF ERROR

Proof of Damages by Enterprise

In this assignment of error, Associated argues that Enterprise did not bear its burden of proof as to the amount of damages sustained by its three barges and the MV OVIDE J as a result of the allisions. Associated argues that the trial court erred in admitting Enterprise's speculative and unsubstantiated damage values. Specifically, Associated argues that the trial court erred in failing to sustain its hearsay objections as to the admission of preliminary damage estimates made by Callahan Marine Consulting, LLC, a marine surveyor used by Enterprise to estimate the damages to the barges. Associated further argues that Enterprise's sole damages witness demonstrated a lack of familiarity with many of the exhibits used to establish the actual costs to repair each barge, as well as a lack of personal knowledge of the figures (supplied by Enterprise's accounting department) used in each vessel's project ledger which was used to establish the repair costs. Associated also argues that Enterprise failed to prove the pre-incident conditions of the MV OVIDE J and the three barges in question. Finally, Associated argues that Enterprise failed to provide evidence that the costs of repairs for each barge and the MV OVIDE J were reasonable.

In response, Enterprise argues that the trial court's damages award was based on admissible evidence, such as witness testimony, and including survey reports and project ledgers.

At trial, Associated's objections to the survey reports and project ledgers as hearsay evidence were overruled by the court. In its appellee brief, Enterprise does not argue that the survey reports and project

ledgers were not hearsay evidence, nor does it argue that any exceptions to the hearsay rule applied to this evidence.

As the party seeking recovery, Enterprise bore the burden of proving its alleged property damages. *Tidewater Marine, Inc. v. Sanco Int'l, Inc.*, 113 F.Supp.2d 987, 1005 (E.D. La. 2000). Enterprise was required to establish "both that the amount claimed is reasonable and that it fairly reflects the actual cost of repair." *Royal Exchange Assur. Co v. M/V GULF FLEET NO. 54*, No. CIV.A. 86-1367, 1988 WL 87881, at *11 (E.D. La. 1988) (citing *United States v. Motor Vessel Gopher State*, 614 F.2d 1186, 1187, n. l (8th Cir.1980)). Further, Enterprise was required to also prove the actual value of its allegedly damaged vessel. *See BP Expl. & Oil, Inc. v. Moran Mid-Atl. Corp*., 147 F.Supp.2d 333, 337 (D.N.J. 2001) ("The burden is on [plaintiff] to prove the extent of its damages, including the actual value of any item damaged at the time just prior to damage."); *see also Oliver J. Olson & Co. v. Am. S.S. Marine Leopard*, 356 F.2d 728 (9th Cir. 1966).

In order to prove the damages sustained by the MV OVIDE J and the subject Enterprise barges as a result of the allisions, Enterprise presented the testimony of Felix Jacob Brown, who had been employed by Enterprise since 2016 as director of maintenance, repair, and new construction and shipyard operations. He testified that reviewing the costs of repairing barges was part of his job. His usual practice was to review damage survey reports on each vessel and then arrive at his repair estimates. He would then assign particular boatyards to make the repairs, based on what was best logistically and financially for the business. Mr. Brown said that depending on the circumstances, he gets involved with the assignment of marine surveyors to survey particular damaged equipment; in this case, he did not do so. He admitted that he did not personally inspect the damaged vessel/barges.

Mr. Brown arrived at his repair estimates by reviewing the preliminary damage reports for the subject barges prepared by Callahan, whom he knew and trusted. He identified the damage reports prepared by Callahan for the barges Enterprise 349B, Enterprise 319,

Enterprise 378, and Enterprise 341.[20] The record does not contain a damage report from Callahan for the MV OVIDE J. Counsel for Associated timely and repeatedly objected to each of the Callahan damage survey reports on the basis of hearsay, but all of his objections were overruled without explanation.

"Hearsay" is a statement, other than one made by the declarant while testifying at the present trial or hearing, offered in evidence to prove the truth of the matter asserted. La. C.E. art. 801.

On appeal, Associated argues that the trial court erred in overruling its hearsay objections as to the Callahan preliminary damage reports. We agree. Mr. Brown did not personally inspect the damaged barges; Callahan did. Mr. Brown did not prepare the damage reports; Callahan did. Enterprise did not call a witness from Callahan to identify and testify about the damage reports. Enterprise offered the damage reports into evidence to prove the truth of the matters asserted therein (preliminary estimates as to the damages to the subject barges). We conclude that the trial court should not have considered the Callahan preliminary damage reports, being hearsay evidence, in its evaluation of Enterprise's damages.[21]

Associated also argues that Mr. Brown, as Enterprise's damages witness, demonstrated a lack of familiarity with many of the exhibits used to establish the actual costs to repair each barge, as well as a lack of personal knowledge of the figures (supplied by Enterprise's accounting department) used in each vessel's project ledger which was used to establish the repair costs.

A party who seeks to submit written hearsay evidence pursuant to La. C.E. art. 803(6) must authenticate it by a qualified witness.

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[20] The trial court found that Enterprise failed to bear its burden of proof regarding barge Enterprise 319, and denied recovery of damages for that barge. Enterprise does not appeal this part of the judgment.

[21] While invoices and bills received by a business in the normal course of operations are considered exceptions to the hearsay rule and may prove monetary damages (*Romero v. LaGrange*, 19-689 (La. App. 3 Cir. 3/4/20), 297 So.3d 127, 134, *writ denied*, 20-01435 (La. 2/9/21), 310 So.3d 178), the Callahan damage surveys were merely preliminary damage estimates that Mr. Brown testified would likely have been amended upon further in-depth inspection of each vessel.

Achary Elec. Contractors, L.L.C. v. SimplexGrinnell LP, 15-542 (La. App. 5 Cir. 1/27/16), 185 So.3d 888, 890. The witness laying the foundation for admissibility of the business records does not have to be the preparer of the records. *Id*. La. C.E. art. 803(6) allows the custodian of the record "or other qualified witness" to establish the essential foundational predicate. *Id.* A qualified witness only needs to be familiar with the record-keeping system of the entity whose business records are sought to be introduced. *Id*. The custodian of the record or other qualified witness must testify as to the record-keeping procedures of the business, and thus, lay the foundation for the admissibility of the records. *Id.* If the foundation witness cannot vouch that the Code of Evidence requirements have been met, the evidence must be excluded. *Id*.

Upon review, we conclude that the trial court erred in allowing the admission of the project ledgers into evidence during Mr. Brown's testimony because Enterprise failed to lay a proper foundation for admission of the project ledgers. Mr. Brown admitted to a lack of personal knowledge of the figures (supplied by Enterprise's accounting department) used in each vessel's project ledger which was used to establish the repair costs. No witness from Enterprise's accounting department was called to testify to authenticate the project ledgers. We conclude that the trial court should not have considered the project ledgers, being hearsay evidence, in its evaluation of Enterprise's damages.

Associated next argues that Enterprise did not prove the pre-incident conditions of the MV OVIDE J and the three barges in question. We agree. As the trial court correctly stated in its reasons for judgment, a party suffering injury to his property may recover only that which is necessary to restore his damaged property to the same condition as existed immediately prior to the tort. *See Genie-Lyn Ltd. v. Delaware Marine Operators, Inc.*, No. CIV.A. 00-0050, 2006 WL 42169, at *7 (W.D. La. 2006) (citing *City of New Orleans v. American Commercial Lines, Inc.*, 662 F.2d 1121, 1124 (5th Cir. 1981)); *see also Royal Exchange*, 1988 WL 87881, at *11 (citing *Freeport Sulphur Co. v. S/S Hermosa*, 526 F.2d 300, 307 (5th Cir. 1976) ("in assessing

collision damages to vessels, a plaintiff is denied repair costs beyond those necessary to restore the property to the condition it was in before the accident").

Regarding the vessel/barges' pre-incident conditions, the trial court found, in its reasons for judgment, that the MV OVIDE J and each barge were, at the time of the allisions, "at proper coast guard operating condition. All of the [Enterprise] vessels impacted by Hurricane Ida and the flotilla breakaway are USCG inspected vessels that were carrying current certificates of inspections." No specific evidence, however, was presented with respect to the actual pre-incident condition of the MV OVIDE J or the subject barges. Simply possessing current Coast Guard certificates of inspection does not establish the actual pre-incident condition of the vessel/barges.[22] Without more, we are only left to speculate as to the actual pre-incident condition of the vessel/barges. We therefore conclude that the evidence presented by Enterprise lacks the specificity required to prove the actual pre-incident condition of the vessel/barges.

Finally, Associated argues that Enterprise failed to provide evidence that the costs of repairs for each barge and the MV OVIDE J were reasonable. For the same reasons expressed above, we agree. Mr. Brown could not verify the basis for the figures in any of the project ledgers, deferring instead to the accounting department at Enterprise who prepared the spreadsheets and would have had the requisite knowledge of those expenses. Again, Enterprise failed to call a witness from its accounting department.

In light of all of the foregoing, we conclude that Enterprise failed to present competent admissible evidence as proof of its damages, and thus failed to support its damages claims. We therefore reverse the

[22] There was testimony that certificates of inspection ("COIs") were performed annually. (*See* testimony of Captain Bellard and Anthony Paul David, senior port captain for Enterprise.) However, no evidence shows when the last COIs were issued for the barges. Mr. David, who became port captain on July 1, 2021, testified that the barges were not inspected when he took over because nothing was due at that time.

damages portion of the court's judgment in its entirety, including the portion of the judgment awarding pre-judgment interest.

SIXTH ASSIGNMENT OF ERROR

Exclusion of Kienitz and Allen deposition testimony

In this assignment of error, Associated argues that the trial court abused its discretion in excluding the deposition transcripts of Kurt Kienitz and Victor Allen. Associated argues that both of these gentlemen were unavailable witnesses within the meaning of La. C.C.P. art. 1450(A)(3) because they both lived outside of the district court's subpoena power. Associated posits that their testimony would have further established ACBL's exclusive control of the crane barges and liability for the incident, and negated Associated's fault.

Mr. Kienitz's deposition was taken on August 31, 2023 in the related federal court matter to which this opinion has previously referred.[23] Mr. Allen's excerpted deposition was taken in the same matter on January 30, 2023. Both transcripts were proffered by Associated.

The trial judge has great discretion in the manner in which proceedings are conducted before his court, and it is only upon a showing of a gross abuse of discretion that appellate courts have intervened. *Pino v. Gauthier*, 633 So.2d 638, 648 (La. App. 1 Cir. 1993), *writ denied*, 634 So.2d 858 (La. 1994), and *writ denied*, 634 So.2d 859 (La. 1994). The trial court has much discretion in determining whether to allow the use of deposition testimony at trial, and its decision will not be disturbed upon review in the absence of an abuse of that discretion. *Bourgeois v. A.P. Green Indus., Inc*., 06-87 (La. App. 5 Cir. 7/28/06), 939 So.2d 478, 493–94, *writ denied*, 06-2159 (La. 12/8/06), 943 So.2d 1095. The trial court further has wide discretion in determining a witness's unavailability. *Id*.

In the present matter, the trial court ruled that the deposition of Mr. Kienitz, former fleet manager for ACBL who was at the Wash Dock during Hurricane Ida, was not admissible because Associated had

[23] *See* footnote 8.

failed to provide enough support for its contention that he was an unavailable witness. Associated argued that Mr. Kienitz now lived in Mississippi more than 100 miles from the courthouse, was beyond compulsory process, and also had refused to appear in court. Associated also argued that Mr. Allen, a former party, was unavailable because he was a resident of Beaumont, Texas, also more than 100 miles from the courthouse and beyond the court's subpoena power.

Upon review, for the following reasons, we conclude that with respect to both witnesses, the court abused its discretion in finding that these witnesses were not unavailable for trial within the meaning of La. C.C.P. art. 1450(A), which provides, in pertinent part:

> A. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Louisiana Code of Evidence applied as though the witnesses were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:
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> * * *
>
> (3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:
>
> (a) That the witness is unavailable;
>
> (b) That the witness resides at a distance greater than one hundred miles from the place of trial or hearing or is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or
>
> (c) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

At the time of his deposition in 2023, Mr. Kienitz apparently lived in LaPlace, Louisiana, which is within 100 miles of the 23rd Judicial District Court. However, at the time of trial, Associated

proffered evidence (after arguing the same before the judge) that Mr. Kienitz was no longer employed by ACBL and had moved to Mississippi, beyond the enforceable subpoena power of the district court. Furthermore, Mr. Allen lived in Beaumont, Texas, at the time of his deposition and of trial, which is also more than 100 miles from the 23rd Judicial District Court, and also beyond the enforceable subpoena power of the district court.

In any event, after our consideration of the proffered deposition testimony of Mr. Kienitz, our assessment of the fault assigned by the trial court to Associated does not change. As an employee of ACBL, Mr. Kienitz mostly testified as to particular facts about the mooring of the crane barges to the Wash Dock and the mooring of the Wash Dock to the piles. He also agreed that once a vessel was accepted into the fleet, the fleeter became responsible for its mooring and safety, a point that the trial court found and which underpinned the finding of ACBL's 60% share of fault. Mr. Kienitz's testimony did not address the independent negligence of Associated in failing to follow its own hurricane preparedness plan.

Mr. Allen, likewise, was an unavailable witness as per La. C.C.P. art. 1450(A)(3). He was part of the MV OVIDE J's crew during Ida, and in his deposition excerpts testified that he saw or felt other breakaway barges strike the MV OVIDE J prior to the near approach of the "flotilla." Associated sought Mr. Allen's testimony to refute Enterprise's claim that Associated's crane barges struck the Enterprise vessels. Considering all of the other evidence introduced, as a whole, we cannot say that Mr. Allen's testimony alone would have changed the trial court's conclusion that the combined negligence of Associated and ACBL caused the flotilla to break away from the shore and the MV OVIDE J to be struck by breakaway barges caused by the breakaway flotilla.

Thus, while we conclude that the court erred in these evidentiary rulings, consideration of this erroneously excluded evidence does not change, in any way, the reasonableness of the trial court's assessment of 30% fault to Associated.

SEVENTH ASSIGNMENT OF ERROR

Limitation of Associated's cross-examination of Captain Bellard

In its final assignment of error, Associated argues that the trial court erred in limiting Associated's ability to cross-examine Captain Bellard of the MV OVIDE J, which prejudiced its ability to defend itself and address each issue raised by Enterprise on direct examination despite ample time to complete the trial.

La. C.C.P. art. 1631(A) recognizes the court's power to require that proceedings be conducted with dignity and in an orderly and expeditious manner and to control trial proceedings so that justice is done. The trial court has great discretion in directing the manner in which proceedings are conducted, and only upon a showing of a gross abuse of that discretion will the appellate court intervene. *Teague v. Teague*, 44,005 (La. App. 2 Cir. 11/25/08), 999 So.2d 86, 93.

In *Teague*, the attorneys were limited to five hours each for their direct and cross-examination of witnesses. The appellate court noted that the limitation had been discussed in a pretrial conference and no objections were made. The appellate court also noted that when told she had only six minutes left, counsel made no objection nor requested additional time. The record further showed that counsel had thoroughly examined the witnesses. On appeal, the court declined to find an abuse of the trial court's great discretion in how it conducted the trial.

Captain Bellard testified on the first day of trial as a witness for Enterprise. At some point during cross-examination by Associated, the court advised counsel for Associated that he had a finite amount of time left within which to conclude his cross-examination. Counsel objected but complied. At the close of that day's testimony, the court reminded the attorneys of the conversation he had had with them at the beginning of the day, wherein he told them that the day's testimony would conclude at a certain time, for reasons that were not explained on the record, but apparently were communicated to counsel prior to the start of that day's proceedings.

Upon review, we find no abuse of the trial court's great discretion in how it conducted the trial. It is clear that the parties were informed

of the issue at the beginning of the day. Associated fails to elucidate exactly what further information Captain Bellard would have provided upon further cross-examination or how Associated was prejudiced in its ability to defend its case. Accordingly, this assignment of error is without merit.

ENTERPRISE'S ANSWER TO THE APPEAL

In its answer to the appeal, Enterprise argues that the trial court erred as a matter of law in ruling that Enterprise's witness Gregory Watkins was not unavailable to testify at trial, pursuant to La. C.C.P. art. 1450(A), *supra*, and therefore erred in not allowing the admission into evidence and use of his prior deposition testimony in lieu of his live testimony at trial. Enterprise argues that Mr. Watkins would have testified as a fact witness to the amounts of maintenance and cure payments made by Enterprise to the four MV OVIDE J mariners, the amounts of which they sought to recoup at trial. Enterprise argues that Associated's counsel had previously stipulated to the admissibility of Mr. Watkins' deposition in the related federal court matter referred to *supra*.[24]

In response, Associated argues that Mr. Watkins is Enterprise's corporate representative, who was not issued a trial subpoena, and who chose not to be present at trial. At trial, counsel for Enterprise asserted that Mr. Watkins lives in Texas, more than 100 miles away from the court, and that counsel could not subpoena him to court because he was the risk manager and unavailable to travel.

A party is not legally "unavailable" as a witness simply because he eschews the trial. *Bourgeois*, 939 So.2d at 493–94. Additionally, a party whose absence from trial is attributable to his choice to be out of state on the date of trial is considered to have procured his own absence. *Id.* The trial court has much discretion in determining whether to allow the use of deposition testimony at trial, and its decision will not be disturbed upon review in the absence of an abuse of that discretion. *Id.*

[24] At this trial, Enterprise proffered the deposition.

The trial court further has wide discretion in determining a witness's unavailability. *Id.*

Upon review, we conclude that the trial court did not abuse its discretion in its ruling which denied Enterprise's use of Mr. Watkins' deposition at trial. The record fails to support the assertions of counsel that Mr. Watkins could not have been subpoenaed and was therefore "unavailable" for trial. While counsel also asserted that some uncertainty in the trial's schedule contributed to his decision not to subpoena Mr. Watkins, this again does not induce a finding that Mr. Watkins was unavailable for trial or that some exceptional circumstances existed justifying the use of his deposition. We also note that counsel for Associated disputed Enterprise's claim that the parties' stipulation to the use certain depositions in the federal court matter also pertained to this case. We conclude that the trial court did not abuse its discretion in this ruling.

Therefore, we affirm the part of the judgment disallowing an award to Enterprise for maintenance and cure as prayed for in its answer to the appeal.

CONCLUSION AND DECREE

For the foregoing reasons, the trial court's assessment of 30% fault and liability to Associated is affirmed. The monetary award in favor of Enterprise and against Associated in the total amount of $928,098.31 is reversed. Costs of appeal are to be borne by each party.

AFFIRMED IN PART,
REVERSED IN PART

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **JUNE 10, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

25-CA-506
C/W 25-CA-507

E-NOTIFIED
23RD JUDICIAL DISTRICT COURT (CLERK)
HONORABLE JASON VERDIGETS (DISTRICT JUDGE)
RACHAEL F. GAUDET (APPELLANT)
RICHARD C. KEAN (APPELLANT)
JORDAN P. PARKER (APPELLEE)
ZACKORY K. WOOD (APPELLEE)
RANDOLPH J. WAITS (APPELLEE)

MAILED
NO ATTORNEYS WERE MAILED