

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF ALABAMA
 SOUTHERN DIVISION

JERRY NILES FIRESTONE,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 09-0719-KD-N
)	
RICHARD C. GIBSON, et al.,)	
)	
Defendants.)	

ORDER

On April 5, 2010, the court issued a scheduling order (doc. 16); because the parties disagreed whether the action could be tried by a jury, the court allowed both parties to file briefs on this issue no later than April 16, 2010, with a provision for replies thereafter. However, only the plaintiff filed a brief on this issue; defendant is thus deemed to have abandoned this issue.

Plaintiff’s brief cites binding precedent in support of its position. Harrison v. Flota Mercante Grancolombiana, S.A., 577 F.2d 968 (5th Cir. 1978)¹; see St. Paul Fire and Marine Ins. Co. v. Lago Canyon, Inc., 561 F.3d 1181, 1184-85 (11th Cir. 2009)(recognizing Harrison as binding precedent in this Circuit). It thus appears clear that defendant is not entitled to make a jury demand in this maritime action.

The original scheduling order included a provision that the action would be tried during the month of January 2011 without a jury, but noted the dispute between the parties. As this action will be tried without a jury, there is no need to amend that order at this time.

Done this the 19th day of April, 2010.

/s/ Katherine P. Nelson
 UNITED STATES MAGISTRATE JUDGE

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