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BLOG

Supreme Court Decides Not to Rock the Boat in Frescati Shipping Co.; Resolves Circuit Split Regarding Safe Berth

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On March 30, 2020, the U.S. Supreme Court issued its long-awaited *CITGO Asphalt Refining Co. v. Frescati Shipping Co.* decision, which resolved the meaning of the "safe berth" clause found in most standard charter party forms by clarifying the contractual duty imposed on charterers. No-18,565 (March 30, 2020). The Court ruled that the traditional language in which the charterer promises to send the vessel to a safe berth is a warranty for safe berth and not merely a promise that the charterer will exercise due diligence in selecting a safe port. In so affirming the Third Circuit's opinion, the Court left in place a judgment in favor of the vessel owner of about $73 million.

Background

Frescati Shipping Co. owned the oil tanker *Athos I* which was sub-chartered to CITGO Asphalt Refining Co. for a voyage from Venezuela to a CITGO affiliate's refinery in New Jersey using a standard form contract called the ASBATANKVOY form. A safe-berth clause in this contract provided that "[t]he vessel shall load and discharge at any safe place or wharf . . . which shall be designated and procured by [sub-charterer], provided the Vessel can proceed thereto, lie at, and depart therefrom always safely afloat."

When the *Athos I* was within 900 ft. of the pier, it struck a submerged anchor in the Delaware River, which pierced its hull and spilled 264,000 gallons of oil into the river. Frescati and the U.S. government paid the initial costs of the cleanup and then sought to recover their costs from a CITGO affiliate.

Over fifteen years of litigation commenced, including two trials and multiple trips to the U.S. Court of Appeals for the Third Circuit. The Supreme Court took up the case to resolve the split in the circuits on how the language should be read. Ultimately, the Third Circuit found the sub-charterer liable for breaching the express warranty contained in the safe-berth clause. *See In re: Petition of Frescati Shipping Co., Ltd., as Owner of the M/T ATHOS I*, Nos. 16-3552, 16-3867 & 16-3868 (3d Cir. Mar. 29, 2018).

Holding

Justice Sotomayor authored the affirming opinion of the Court, stating "given the unqualified language of the safe-berth clause, it is similarly plain that this acknowledged duty is absolute." Justices Thomas and Alito dissented.

The Court grounded its decision in the plain language of the safe-berth clause, defining “safe” as meaning “free from harm or risk.” Further, because the safe-berth clause in the contract was not subject to any qualifications or conditions and there was no reference to due diligence or a similar concept incorporated, the clause’s plain meaning established an express warranty of safety.

The Court rejected sub-charterer’s argument that a “general exceptions clause” in the contract exempted it from liability for losses due to “perils of the seas,” a concept that allows recovery under a theory of force majeure. By its terms, the “general exceptions clause” did not apply where liability was “otherwise . . . expressly provided” in the contract.

Next, sub-charterer argued that to a contract clause that required charterer to obtain oil-pollution insurance was evidence that the parties intended to relieve sub-charterer of liability for oil spills. The Court rejected that argument, noting that the oil-pollution insurance covered more than just the risks of an unsafe berth. Sub-charterer also offered an alternative interpretation of the safe-berth clause that focused on the vessel master’s right to refuse entry into an unsafe berth. The Court held that, even if true, that interpretation did not relieve sub-charterer of its liability for selecting an unsafe berth.

Finally, sub-charterer argued that safe-berth clause should not be read as a warranty of safety, basing its argument on “The Law of Admiralty” by law professors Grant Gilmore and Charles Black Jr. The Court found this argument unpersuasive, interpreting Gilmore and Black as believing that vessel owners are better able than charterers to bear the liability from an unsafe berth and concluded that the authors’ prescriptive view “does not alter the plain meaning of the safe-berth clause here.”

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