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Important U.S. Supreme Court decision on safe berth clauses

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Earlier this week, the US Supreme Court reached a landmark decision on safe berth clauses in a case dating back to 2004.

By way of background, the "ATHOS 1" was fixed pursuant to an ASBATANKVOY charterparty to carry a cargo of heavy crude oil from Venezuela to Paulsboro, New Jersey. During the final stretch of the voyage, as the vessel entered the Delaware River, an uncharted abandoned ship anchor ruptured the vessel's hull causing 264,000 gallons of oil to spill. The Oil Pollution Act 1990 required the Owners to fund the clean-up costs in the first instance (limited to US$45 million) and the US Federal Government's Oil Spill Liability Trust Fund reimbursed Owners for an additional US$88 million in clean-up costs.

Owners and the US Federal Government filed suit against voyage charterers for breach of the ASBATANKVOY charterparty safe berth clause. The case went through two trials, and before the Court of Appeals for the Third Circuit twice, before the Supreme Court were asked to determine ultimate liability.

The question before the Court was whether the safe berth clause was a warranty of safety, which meant that liability for an unsafe berth would be imposed on voyage charterers irrespective of whether they exercised due diligence. The answer to that question was yes; the language of the safe berth clause in this case was unambiguous and unqualified. The obligation on the voyage charterers was to designate a berth that was free from harm or risk such that the vessel come and go from always safely afloat. The Court went on to comment that "charterers remain free to contract around unqualified language that would otherwise establish a warranty of safety, by expressly limiting the extent of their obligations or liability.

In the absence of any such qualifying language however the Supreme Court has made it clear that a charterer is liable to the owner for any consequences arising out of the ship being ordered to an unsafe berth, an obligation unfettered by any issues of due diligence or the degree of knowledge on the part of the charterer.

"Athos 1"

U.S. Supreme Court decision

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