

Circular From CHARTERERS

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Gard Loses Landmark Safe Port Case Against the Charterers of the “Ocean Victory”

The case of the “Ocean Victory” has courted much publicity and interest and the various Maritime Law firms are now circulating their bulletins summarising the case. Rather than regurgitating and repeating we thought we would simply comment in Layman’s terms.

The “Ocean Victory” was a Capesize dry bulk carrier that sank off the coast of Japan. The Ship was discharging cargo at Kashima, but then sailed from that port because it was decided that due to an unusual combination of adverse weather conditions it was too dangerous for her to stay at her berth. Unfortunately, whilst attempting to leave the port she ran aground and broke up. The estimate of the loss arising from this case is around US\$170 million.

The owners alleged that the charterers had sent the vessel to an unsafe port, in breach of the safe port warranty under the charterparty. The Norwegian underwriters, Gard Marine and Energy Services, brought a claim against the charterers and in the first instance the trial judge ruled that the charterers were in breach of the safe port warranty. Thankfully this decision was overturned by the Court of Appeal. The position has just been considered by the Supreme Court in the UK, which has confirmed the decision of the Court of Appeal.

This is a welcome and favourable outcome from a charterers standpoint. In simple layman’s terms the charterers are not responsible because the adverse conditions prevailing at the time were abnormal and could not have been reasonably foreseen.

This case is not a ‘get out of jail’ card for charterers, because claims relating to the safety of ports and berths are complex and technical and each case is very much determined by the facts, which can be difficult to determine and are often open to dispute and questions of interpretation. Nonetheless the ruling of the Supreme Court in this case does considerably strengthen a Charterers position where it can be demonstrated that the circumstance that led to a port becoming unsafe were abnormal and could not have been foreseen.

Another point addressed by the Supreme Court was whether a charterer has a right to limit his liability to a shipowner for the loss of the vessel. In the case of the vessel “CMA Djakarta” the Court of appeal ruled that Charterers could not limit their liability to the owner for the loss of the vessel, this case was settled before it went to further appeal, so the question was never legally resolved. In considering this point in relation to the ‘Ocean Victory’ the Supreme Court unanimously supported the ruling of the Appeal Court. This has no bearing on the “Ocean Victory” case, because the Charterers are not liable to the owner for the loss of the vessel. It is however, an unwelcome decision generally because it means that if a charterer is held to be liable for the loss of a vessel there is no limit to the potential value of the claim.

In summary, the Supreme Court's support of the Court of Appeal's ruling in the "CMA Djakarta" is bad news from a Charterers point of view, although it only confirms what must otherwise have been assumed. By contrast the decision in the "Ocean Victory" is in many ways a victory for common sense, why should a Charterer be liable for something not only beyond his control, but also abnormal to the extent that it could not have been foreseen. The cost of these cases runs into tens of millions of dollars. This case will help to stem the flow of vexatious claims against charterers for breach of the safe port warranty, which has been an unwelcome and unjustified trend over recent years. Sadly, in many cases, poor navigation and seamanship are often the real cause and were certainly factors in this case.

This case was handled by Quadrant Chambers who have produced a very good legal synopsis for those that would like something more detailed and precise, we have also provided a link to the Supreme Court Ruling

[Bulletin from Quadrant Chambers](#)
["Ocean Victory" Supreme Court Ruling](#)

Source of Information: The Charterers P&I Club