



MFB Solicitors

Fishmongers' Chambers
1 Fishmongers' Hall Wharf
London EC4R 3AE
Tel: +44 (0)20 7330 8000
Fax: +44 (0)20 7256 6778

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UK SUPREME COURT DISMISSES OCEAN VICTORY APPEALS

The UK Supreme Court, on 10 May, handed down a landmark ruling in relation to the substantial disputes arising from the grounding and eventual total loss of the cape-size vessel, the M/V “OCEAN VICTORY”, at Kashima, Japan in October 2006.

In its ruling, the UK Supreme Court unanimously dismissed Gard Marine and Energy / China National Chartering Co.’s appeals in respect of the claims against Daiichi of Japan and re-affirmed the earlier Court of Appeal decision that the port of Kashima was not an unsafe port and that the grounding of the M/V “OCEAN VICTORY” occurred as a result of an abnormal occurrence. The decision is also welcome news for the port of Kashima and its users.

The Supreme Court, by a majority, also found in Daiichi’s favour that the owners’ insurers, Gard, could not seek to claim for the loss of the vessel. The majority of the Justices holding that the widely-used BARECON charter party form contained an agreed insurance-funded solution between the owners and bareboat charterers with the result that there was no liability for the loss of the vessel that Gard could seek to pass to the time charters, China National Chartering / Daiichi. The Supreme Court also decided that charterers could not seek to limit their liability to a ship-owner for damage caused to a chartered vessel relying on the 1976 IMO Convention for Limitation of Liability for Maritime Claims.

Gerard Hopkins, the partner at MFB Solicitors leading Daiichi’s successful legal team, commented that the Supreme Court’s decision has brought welcome clarity to the legal test on the important issue of charterers’ safe port obligation. He also commented that the ruling by the UK Supreme Court raises serious questions for insurers of bareboat chartered tonnage and their right to make subrogated recoveries from charterers. Insurers now face difficult legal routes to make recoveries in the event of casualties in future. As a result of the ruling, owners and operators of bareboat chartered tonnage may need to consider amending their contractual arrangements, and, in the future, BIMCO may have to consider re-writing the insurance provisions of the BARECON form. Insurers may also have to carefully re-examine their insurance arrangement for bareboat chartered tonnage and this may lead to re-pricing of the risks.

The UK Supreme Court’s decision crucially denies charterers of vessels the right to limit liability for damage caused to a ship relying on the 1976 IMO Limitation Convention. This arguably creates an uneven playing field where in the event of a casualty ship-owners have the benefit of limitation of liability, but charterers do not have the ability to rely on the same international convention to limit their liability towards owners for damage to the ship. This leaves charterers’ liability insurers carrying the risk of potentially huge losses for damage to chartered tonnage as has been seen, for example, in relation to container ship casualties. This raises the question whether the 1976 IMO Limitation Convention possibly requires reappraisal if it is to meet the needs of the diverse

commercial and operating interests in shipping in the 21st century.

There is no doubt that the Supreme Court's landmark ruling in the "OCEAN VICTORY" will have a profound impact on the development of shipping and insurance for many years to come.

For further information about the case, please contact Gerard Hopkins.

Gerard Hopkins ghopkins@m-f-b.co.uk