

ATHOS I: \$71.5M Judgment in favor of Vessel Owners and Against Charterer and Wharfinger: Lessons Learned

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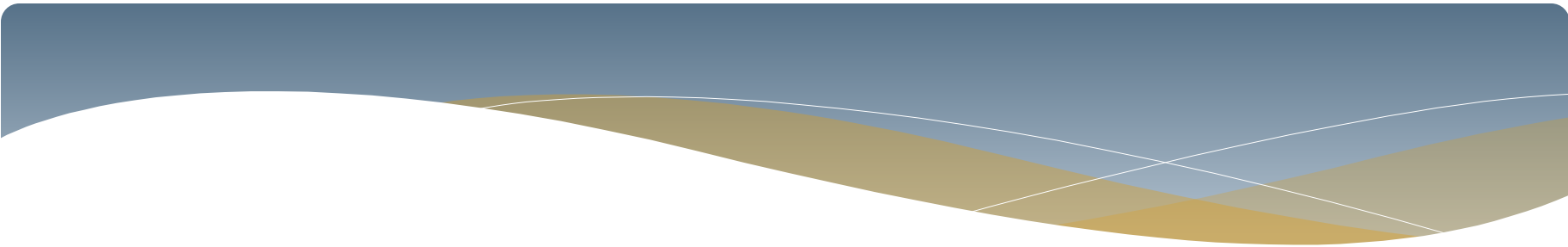
Damages Sustained by Frescati

1. OPA Unreimbursed Removal Costs	\$43.5 M
2. Non-OPA Response Costs	1.5 M
3. Settlement of Salem Nuclear Power Plant Claim	1.5 M
4. Unrepaired Hull Damages	.5 M
5. Damages for Vessel and Miscellaneous Port Expenses	< .5 M
6. Stipulated Damages (NRDA, Loss of Hire, etc.)	<u>6.5 M</u>
	<u>\$55.5 M</u>

Wharfinger's Negligence

Take Away - 8 Points

1. A wharfinger has a duty to provide ships with a safe berth and approach..
2. A wharfinger has a duty to ascertain the conditions in the approach to the berth and remove or warn of any hazards lurking there.
3. The “approach” is given its plain meaning in the maritime context: “when a ship transitions from its general voyage to a final, direct path to its destination, it is on an approach.”
4. The ship must be in the usual path of ships docking at that terminal—no short cuts.

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5. The standard of care—HOW a terminal should “ascertain” the conditions in the approach—through side scan sonar technology.
 6. The standard of care will vary based on the demands of reasonableness and prudence.
 7. Custom does not establish the standards of care.
 8. Negligent Navigation and Seamanship can result in comparative fault.

Safe Berth Warranty

Take Away – 3 Points

1. A safe berth warranty is an express assurance that the berth and the approach are safe for the arriving vessel.
2. The warranty may be limited to the draft listed in the voyage orders.
3. Exceptions to the warranty for poor navigation and seamanship.

Damages Take Away

Cooperation with the U. S. Coast Guard – Priceless

1. Oil Spill Cleanup – cost minimization is not a priority to the Federal On Scene Coordinator
2. House on fire stage vs. negotiation stage: When to pull in the reins on costs.
3. Document all clean-up costs—as if it were your own money.

Working with the U. S. Coast Guard as a Major Casualty - Take Away Points

1. Cooperation plus transparency = Good Will
2. Good Will is priceless.
 - Commendation from USCG to Owners
 - USCG took over the cleanup

Submitting a Claim to the National Pollution Funds Center – Oil Spill Liability Trust Fund Take Away

1. Envision the claim submission on Day 1
 - Stay organized
 - Undocumented expenses, charges? Never pay them!
 - Vet the process with an independent auditor
2. The Devil is in the Details.
 - Make it “easy” for the Fund to say “yes” by organizing and backing up the claim
 - Make sure your “Qualified Individual” has an experienced finance department.

Lessons for Charterers

1. Under U.S. Law, the vessel owner may be a third party beneficiary of the voyage charter, even though not a party.
2. The typical voyage charter party contains safe port and safe berth warranties.
3. As the charterer, under U.S. law, the warranty may be deemed “absolute” rather than “due diligence.”
4. Defenses of Poor Navigation or Seamanship still apply.
5. To avoid these consequences, amend the voyage charter party to expressly exclude third-party beneficiaries.

Lessons for Wharfingers

1. In the U.S., a wharfinger has a duty to take reasonable steps to ensure that berth and approaches are safe for vessels docking there.
2. The approaches can include areas designated as Federal anchorages. Don't assume the Feds are checking for obstructions.
3. Side Scan Sonar has been found to be effective and relatively inexpensive.
4. "Periodic" inspections are required.
5. A change in procedures (such as enlarging the docking window) may require an inspection.

Lessons for Vessel Owners, Vessel Managers and Captains

1. Never agree to waive then safe port warranty in a charter party for a vessel transiting U.S. waters.
2. Understand that the safe port warranty is also permission for the Captain to refuse to enter a port he or she deems unsafe.
3. Do not assume that U.S. ports are free of hazards lurking on the bottom.
4. The Ship's draft is critical to the warranty claim, the wharfinger's negligence claim and can affect the defenses of seaworthiness and negligent navigation.