Safe berth court findings

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This article considers a recent and very important finding in the US courts in relation to what constitutes a safe berth and approach.

The facts

Approaching its berth at a terminal near Philadelphia in 2004, the tanker *Athos I* struck a submerged anchor. The ship's hull was punctured and some 263,000 gallons of crude oil spilled into the Delaware River. The clean-up operations cost approximately US$180m.

First instance

The owner interests of the *Athos I* brought an action against affiliates of Citgo, one of which owned the terminal and another of which was the voyage charterer of the ship. Owner interests contended that Citgo breached its warranty to provide a safe port/safe berth for the ship to discharge the cargo and was therefore liable to reimburse the owner interests for the costs of the clean-up paid by the owner.

The district court ruled in favour of Citgo and dismissed the claim. Among other things, it held that Citgo was obliged to exercise due diligence only in providing a safe berth/safe port and that Citgo had done so. It also held that the anchor was submerged in an area outside the control of Citgo.

On appeal

In its decision issued 16 May 2013, the US Court of Appeals for the Third Circuit reversed the district court's decision and sent the case back to the district court for further factual findings with respect to the draft of the ship.

While the court addressed and resolved several technical points, the significance of the case for the club's members is twofold:

1. The court's decision affirmed the rule that a port is safe when '*the particular chartered vessel can proceed to it, use it, and depart from it without, in the absence of abnormal weather or other occurrences, being exposed to dangers which cannot be avoided by good navigation and seamanship*'. The court aligned itself with other circuits, including the Second Circuit. Meanwhile a case decided in 1990 by the Fifth Circuit was not followed, whereby that court held that a due diligence standard should be read into a charterer's warranty of a safe berth/safe port.
2. The court took a practical view to defining approach, noting that '*when a ship transitions from its general voyage to a final, direct path to its destination, it is on an approach*'. The submerged anchor was some 900 feet from the berth, in an area not under the direct control of Citgo, but between the main ship channel and the berth. The ship was 748 feet long.

Further appeal?

It remains to be seen whether Citgo will ask the US Supreme Court to review the case. It also remains to be seen whether, on remand, the district court finds that the ship's draft was not an issue. If the draft is not an issue and the decision stands, the owner interests will be in a position to recover from Citgo all or a significant portion of the costs they paid for the clean-up.

Conclusion

With many charterparty disputes being resolved in arbitration, US courts of appeal rarely decide safe port/safe berth issues. Should the decision stand, it will reaffirm the traditional rule applied in the US and England that a safe berth warranty is a warranty, not watered down by a due diligence standard. Also, the decision makes clear that an 'approach' is defined by the custom and practice at the port and is usually the most direct path. The decision will also assist commercial parties, clubs and lawyers in predicting how such disputes will be decided and will help arbitrators to decide them consistently and in line with the parties' expectations.