IN THE SUPREME COURT OF THE UNITED STATES

No. 18-565

CITGO ASPHALT REFINING COMPANY, ET AL.,
PETITIONERS

v.

FRESCATI SHIPPING COMPANY, LTD., ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

MOTION FOR DIVIDED ARGUMENT

Pursuant to Rule 28.4 of the Rules of this Court, the Solicitor General, on behalf of the United States as respondent, respectfully moves for divided argument in this case. We suggest the following division of argument time: 15 minutes for the United States and 15 minutes for the private respondents. Counsel has authorized us to state that the private respondents agree with that division of argument time and therefore join in this motion. Granting the motion would not require the Court to enlarge the overall time for argument.

This case concerns the proper interpretation of a standard maritime contract provision known as the "safe berth" or "safe

port" clause (collectively, safe berth clause). The case arose from an oil spill caused when the M/T ATHOS I (ATHOS I), an oil tanker owned and managed by the private respondents and chartered by petitioners, struck a large submerged anchor while preparing to dock at petitioners' oil refinery on the Delaware River. Pet. App. 3a. The allision occurred approximately 900 feet from petitioners' wharf, in a federally designated anchorage. Id. at 6a. The private respondents paid approximately $143 million to clean up the oil spill in the first instance. Id. at 3a, 7a. The United States reimbursed respondents for approximately $88 million of their expenses under the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 et seq., thereby becoming subrogated to respondents' rights against third parties to the extent of that reimbursement. See Pet. App. 3a, 9a; 33 U.S.C. 2715(a).

Private respondents and the United States sought to recover the costs of the spill from petitioners under the contractual safe berth clause in the parties' voyage charter. In industry-standard language, that clause required petitioners, as charterers of the ATHOS I, to direct the vessel to a "safe place or wharf * * * provided the Vessel can proceed thereto, lie at, and depart therefrom always safely afloat." Pet. Br. Add. 8a; see id. at 4a (requiring vessel to "proceed * * * direct to the Discharging Port(s), or so near thereunto as she may safely get (always

afloat)"); id. at 24a (requiring petitioners to direct the ATHOS I to "[o]ne (1) or two (2) safe port(s)").

The court of appeals held that the safe berth clause is a warranty that the port designated by the charterer is safe for the vessel -- not merely, as petitioners contended, a promise to exercise due diligence in selecting the vessel's destination. Pet. App. 13a-14a; see id. at 297a-304a (prior opinion of the court of appeals). The court further determined that petitioners breached the safe berth warranty, and were liable to the private respondents and the United States for the costs of cleaning up the oil spill. Id. at 25a; see id. at 43a-44a. The question presented in this case is whether, as the court of appeals held, the safe berth clause functions as a warranty of safety, rather than only a promise that the charterer will exercise due diligence in choosing the vessel's destination.

Both the private respondents and the United States have filed briefs arguing that the court of appeals' interpretation of the safe berth clause is correct. The private respondents and the United States reason that the warranty interpretation is consistent with the plain language of the safe berth clause; the vast majority of judicial and arbitral authority in both the United States and England; industry custom and practice; and maritime policy considerations.

Although the private respondents and the United States agree on the correct interpretation of the safe berth clause, they have distinct perspectives on the question presented. The private respondents are participants in the maritime shipping industry, and thus have direct knowledge of the customs of that industry, as well as a recurring interest in the proper interpretation of the safe berth clause. The United States also has an interest in the sound development of maritime law, as well as a substantial financial stake in this case and a distinct interest in the proper application of the OPA and matters concerning conditions in federal anchorages. We therefore believe that oral presentation of the views of both the United States and the private respondents is likely to be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

SEPTEMBER 2018