No. 18-565

IN THE

Supreme Court of the United States

CITGO ASPHALT REFINING COMPANY; CITGO PETROLEUM CORPORATION; CITGO EAST COAST OIL CORPORATION,

Petitioners,

v.

FRESCATI SHIPPING COMPANY, LTD.; TSAKOS SHIPPING & TRADING, S.A.; AND UNITED STATES,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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July 9, 2019

QUESTION PRESENTED

Whether under federal maritime law a safe berth clause in a voyage charter contract imposes strict liability on the charterer with respect to a ship's safety, or instead imposes at most a duty of due diligence.

PARTIES TO THE PROCEEDING

The parties to the proceeding are listed in the caption. Petitioners CITGO Asphalt Refining Company, CITGO Petroleum Corporation, and CITGO East Coast Oil Corporation are collectively known as CARCO.

RULE 29.6 STATEMENT

CITGO Asphalt Refining Company is not a corporation and has no parent corporations. It is a privately held General Partnership whose general partners are CITGO Petroleum Corporation and CITGO East Coast Oil Corporation, both of which are private, non-publicly held entities.

CITGO Petroleum Corporation's parent is CITGO Holding, Inc., which is a wholly owned subsidiary of PDV Holding, Inc., which is a wholly owned subsidiary of Petróleos de Venezuela, S.A. ("PDVSA"). No publicly held company owns 10% or more of CITGO Petroleum Corporation's stock.

CITGO East Coast Oil Corporation's parent is CITGO Investment Company, a private, non-publicly held entity. No publicly held company owns 10% or more of CITGO East Coast Oil Corporation's stock.

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The opinion of the court of appeals, Pet. App. 1a-44a, is reported at 886 F.3d 291. The court of appeals' order denying CARCO's petition for panel rehearing and rehearing en banc, Pet. App. 270a-271a, is unreported. The opinion of the district court, Pet. App. 45a-269a, is reported at 2016 WL 4035994.

An earlier opinion of the court of appeals, Pet. App. 272a-329a, is reported at 718 F.3d 184. The court of appeals' order denying CARCO's petition for panel rehearing and rehearing en banc of this earlier opinion, Pet. App. 345a-346a, is unreported. An earlier opinion of the district court, Pet. App. 330a-344a, is reported at 2011 WL 1436878.

JURISDICTION

The court of appeals issued its opinion on March 29, 2018. Pet. App. 1a-44a. The petition for a writ of certiorari was timely filed on October 26, 2018. This Court granted certiorari on April 22, 2019, and has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Constitution provides that "[t]he judicial Power shall extend to . . . all Cases of admiralty and maritime Jurisdiction." U.S. Const. art. III, § 2, cl. 1. 28 U.S.C. § 1333 provides that "[t]he district courts shall have original jurisdiction, exclusive of the courts of the States, of: (1) Any civil case of admiralty or maritime jurisdiction."

STATEMENT OF THE CASE

This case involves claims for extraordinary and unjustified contract damages against CARCO arising from an oil spill caused when the oil tanker *Athos I* struck a submerged and uncharted anchor abandoned by an unknown party in the Delaware River. CARCO had chartered the *Athos I* and owned the marine terminal to which it was headed. It is undisputed that CARCO neither knew, nor had any reason to know, that the anchor was in the river. It is also undisputed that the Federal Anchorage in which the anchor was hidden was not maintained or controlled by CARCO and that CARCO had no role in navigating the vessel.

Despite the fact that CARCO bears no fault for the accident, the courts below entered a judgment of more than $140 million against it, to be split between the vessel owners and the United States. The courts relied solely on a commonplace safe berth clause included in the ship charter contract. In their view, the safe berth clause is an implied warranty that imposes strict liability on charterers for all damages arising out of a vessel's entry, use, or exit from a designated berth. The strict liability rule is unsound, however, both as a matter of contract interpretation and sensible maritime policy. Indeed, the origins of that rule are completely obscure. The court of appeals almost slavishly relied upon a line of Second Circuit decisions, but those decisions contain little reasoning and provide no justification for treating the clause as a guarantee, which assigns massive liability for all damages arising out of a vessel's entry, use, or exit from a designated berth to a mere charterer without any proof of fault. The decisions also wholly ignore a decision from this Court that plainly

disclaimed the charterer's strict liability for all possible risks under a safe berth clause.

This Court should instead adopt the reasoned position of the Fifth Circuit, wholly endorsed by the preeminent treatise on admiralty law (and others), that safe berth clauses impose at most a duty of due diligence on the charterer. That duty follows from the fact that safe berth clauses are best interpreted as limited provisions that grant charterers the right to select the berth, and that impose on them a corresponding duty to pay the resulting expenses if a vessel's captain exercises the right to reject the selected berth as unsafe. The clauses do not speak at all to accidents resulting from unforeseeable dangers such as occurred in this case. Liability for such events should be based on tort principles or other sources of law, such as the federal cost-spreading scheme for oil spills that addresses precisely the type of loss that occurred in this case. Courts should not foist liability on an innocent party based upon contract language that does not clearly shift liability to that party.

A. Factual and Regulatory Background.

The Charter Contracts. In 2001, the ship owner, Frescati Shipping Company, Ltd. ("Frescati"), chartered (*i.e.*, leased) the *Athos I* to Star Tankers Inc. ("Star") via a standard industry form contract known as a "time charter," which granted Star the right to subcharter the ship for specific voyages under whatever contractual terms it could negotiate. That long-term contract between Frescati and Star contained an English choice-of-law clause. Tsakos Shipping & Trading, S.A. ("Tsakos") was the manager of the *Athos I*.

Three years later, Star subchartered the tanker to CARCO for a single voyage to carry a cargo of crude oil from Venezuela to CARCO's asphalt refinery in Paulsboro, New Jersey under a "voyage charter" contract. See Addendum ("Add.) 1a-48a (voyage charter contract). Voyage charter contracts "are commonly drafted using highly standardized forms specific to the particular trades and business needs of the parties." *Stolt-Nielsen S.A.* v. *AnimalFeeds Int'l Corp.*, 559 U.S. 662, 666 n.1 (2010). The form used here was the ASBATANKVOY charter party form, Pet. App. 279a, which "is one of the most universally accepted and widely used charter-parties in the ocean transportation of crude oil, petroleum products, and liquid chemicals." Br. of The Maritime Law Ass'n of the United States and The Ass'n of Ship Brokers & Agents (USA) Inc. as *Amici Curiae* in Support of Pet'rs 4 ("MLA/ASBA Petition-stage Br."). The contract between Star and CARCO provided that any disputes between the parties would be governed by U.S. law. Add. 35a. Frescati, the titled ship owner, was not a party to the contract and was not mentioned in the contract. The voyage charter defined Star as the "owner" of the vessel for purposes of the contract. *Id.* at 1a.

The voyage charter also included the following "safe berth" clause, see Add. 8a:

> [t]he vessel shall load and discharge at any safe place or wharf, . . . which shall be designated and procured by the Charterer, provided the Vessel can proceed thereto, lie at, and depart therefrom always safely afloat, any lighterage [cargo transfer] being at the expense, risk and peril of the Charterer. . . .

It also provided that:

> The vessel . . . shall, with all convenient dispatch, proceed as ordered to Loading Port(s) named . . . or so near thereunto as she may safely get (always afloat) . . . and being so loaded shall forthwith proceed, as ordered on signing Bills of Lading, direct to the Discharging Port(s), or so near thereunto as she may safely get (always afloat), and deliver said cargo.

Add. 4a. See also Add. 24a (rider provision specifying that the discharge ports would be: "One (1) or two (2) *safe port(s)* United States Atlantic Coast . . . ") (emphasis added).[1] Although the voyage charter did not specify that the discharge berth would be CARCO's refinery in Paulsboro, New Jersey, the *Athos I*'s captain and crew had notice of the destination prior to the voyage. See, *e.g.*, Pet. App. 333a (noting that the bill of lading signed by the captain prior to departure specified Paulsboro, New Jersey as the destination).

The Casualty. The casualty occurred on November 26, 2004, near the end of the ship's 1900-mile voyage. During the voyage, CARCO had no role in operating the vessel or making navigational decisions. The captain and crew were employed and controlled by the vessel, not CARCO. In addition, the vessel (not CARCO) selected, hired, and supervised a local river pilot and a docking pilot to assist the captain in navigating the Delaware River and docking at the Paulsboro berth.

The *Athos I* was crossing and "approximately halfway through" an area of the Delaware River

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[1] Technically, the first quoted provision is a "safe berth" clause and the other provisions establish a "safe port" obligation. We refer to these provisions collectively as the "safe berth" clause, as did the courts below. *See* Pet. App. 13a-14a, 275a.

known as Federal Anchorage No. 9 (the "Federal Anchorage Area"), when the vessel struck an abandoned, nine-ton anchor. Pet. App. 281a-282a. The Anchorage is essentially a federally maintained and regulated parking lot for large ships waiting to dock along, or depart from, the Delaware River. The entirety of the Federal Anchorage Area, including where the abandoned anchor laid, is open to general commercial and recreational vessel traffic and "is neither controlled nor maintained by CARCO." *Id.* at 285a. The *Athos I* was still some 900 feet (or three football fields) away from CARCO's berth and well within the Federal Anchorage Area when it hit the anchor. *Id.* at 282a, 329a (illustration). The *Athos I* was a single-hull vessel, and its hull was punctured by contact with the anchor, causing approximately 263,000 gallons of crude oil to spill into the Delaware River. *Id.* at 275a, 278a.

The Cleanup under the Oil Pollution Act. The post-casualty cleanup was conducted pursuant to the Oil Pollution Act of 1990 ("OPA"), Pub. L. No. 101-380, 104 Stat. 484, codified at 33 U.S.C. §§ 2701, *et seq.*, a statute passed in the wake of the Exxon-Valdez incident. OPA was designed to "encourage rapid private party responses" to oil spills, *In re Complaint of Metlife Capital Corp.*, 132 F.3d 818, 822 (1st Cir. 1997), by identifying "responsible part[ies]," who are required to pay for a cleanup in the first instance. 33 U.S.C. § 2702(a). As the titled owner of the vessel that discharged the oil, Frescati was designated the "responsible party." *Id.* § 2701(32)(A).

OPA also functions as a cost-spreading scheme and permits "responsible part[ies]" to limit their liability. *Id.* § 2704. Frescati filed an ex parte administrative claim asking the National Pollution Fund Center ("NPFC") to limit its liability as a responsible party

under § 2704 of OPA, and reimburse it for cleanup costs incurred above the limit. The NPFC limited Frescati's liability to $45,475,000 and reimbursed Frescati from the federal Oil Spill Liability Trust Fund for approximately $88 million in excess of the limitation amount that Frescati paid to remediate the spill. The Trust Fund, which is separate from the general treasury, consists of taxes collected on imported petroleum products, plus payments received from environmental taxes and penalties. 26 U.S.C. § 9509(b). The Trust Fund effectively requires all members of the petroleum industry to contribute to the costs of oil spill cleanups. CARCO paid approximately $103 million into this Fund between 1990 and 2004. Once the Trust Fund reimbursed Frescati, the United States acquired by subrogation Frescati's rights against any third parties for the $88 million paid. 33 U.S.C. § 2715(a).

OPA further provides that a responsible party can be exonerated from all liability if it demonstrates that the spill was caused by "an act or omission of a third party" and the responsible party exercised due care. 33 U.S.C. § 2703(a)(3). Frescati applied for exoneration under this provision, claiming quite sensibly that the incident was the sole fault of the unknown party that lost or discarded the anchor. Inexplicably, Frescati voluntarily withdrew this claim and instead opted to pursue claims against CARCO. See Pet. App. 284a n.6 (noting that "[i]t is unclear why Frescati withdrew this claim"). If granted, Frescati's exoneration claim would have reimbursed all of its cleanup costs from the Trust Fund. See 33 U.S.C. §§ 2708(a)(1), 2713(b)(1)(B).

B. Prior Proceedings.

Respondents' Lawsuits. On January 31, 2005, Frescati filed an action in the district court pursuant

to the court's admiralty jurisdiction, 28 U.S.C. § 1333(1). This action was a "Petition for Exoneration from or Limitation of Liability" brought pursuant to 46 U.S.C. app. § 183 (2005), which caps liability for vessel owners for certain types of claims arising from a maritime casualty but not with respect to liability imposed by OPA. CARCO filed a claim in this limitation action for the loss of its cargo, and Frescati then counterclaimed against CARCO in both contract and tort[2] for its unreimbursed cleanup costs and additional damages (*e.g.*, vessel damage, lost earnings) totaling nearly $56 million. See Pet. App. 243a-247a. Frescati's contract claim asserted that CARCO breached the safe berth clause in the Star-CARCO voyage charter contract, even though Frescati was not a party to that contract. As partial subrogee to Frescati's claim, the United States later filed a separate action against CARCO raising contract and tort claims, in which it sought to recover the $88 million paid by the Trust Fund to Frescati. Star is not a party to either of these actions.

The two disputes involving CARCO were consolidated for trial. At trial, the United States' claim was limited to its contract claim because, by pre-trial agreement, the United States forfeited its tort-based theories of recovery against CARCO. The resulting bench trial was conducted over 41 days in

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[2] The contract claim arose from CARCO's role as the charterer of the vessel. The tort claim for negligence arose from CARCO's separate role as the wharf owner. The tort claim is no longer at issue. The court of appeals vacated the district court's tort judgment in Frescati's favor, refusing to affirm the district court's holding that CARCO breached any duty owed as the wharf owner to find the anchor located within the Federal Anchorage Area. Pet. App. 43a.

the fall of 2010, and involved 61 live witnesses, 48 witnesses by deposition, and 1,800 exhibits.

First District Court Decision. The district court found CARCO "not liable in either tort or contract." Pet. App. 336a. The court determined that there was "no evidence" that CARCO or any other party to the litigation "knew or had reason to believe that the anchor was in the river." *Id.* at 334a. "After hearing all of the evidence," the court concluded that "the fault for the casualty lies with the anchor's former owner, who abandoned it in the river without notifying anyone." *Id.* at 344a; see also *id.* at 334a (noting "supposition" that the anchor "may have been used as part of dredging operations" by a federal contractor).

The district court denied Frescati's claim (and the United States' claim as its subrogee) that CARCO was liable in contract pursuant to the safe berth clause in the voyage charter. Although Frescati was not a party to that contract, it sought to invoke the clause "as an intended third-party beneficiary." Pet. App. 340a. The district court rejected this argument. *Id*. at 340a-341a. The court also held that CARCO did not breach the safe berth clause. *Id.* at 341a-342a. The court acknowledged that some courts have interpreted such clauses "as an unconditional guarantee, in effect imposing strict liability" upon charterers. *Id.* at 341a. The district court, however, found "more persuasive" the view of the Fifth Circuit in *Orduna S.A.* v. *Zen-Noh Grain Corp.*, 913 F.2d 1149, 1156-57 (5th Cir. 1990), that such clauses instead "impose[] upon the charterer a duty of due diligence to select a safe berth." Pet. App. 341a-342a.

The district court found that "CARCO fulfilled its duty of due diligence" and that "the port and berth were generally safe," given the "volume of commercial

traffic that passed without incident through the Anchorage." Pet. App. 342a. The court further found that Frescati was "familiar" with the port and berth, because 14 vessels operated by Tsakos had called at the Paulsboro berth in the six years prior to the casualty, including the sister ship to the *Athos I*. *Id.* at 343a. The court also observed that "the crew of the *ATHOS I* did not devote the care and attention to preparation of the voyage planning that might have been advisable." *Id.* at 344a.

Finally, the district court rejected Frescati's negligence claim against CARCO in its role as the wharfinger (the operator of the Paulsboro wharf) because the court concluded that CARCO "had no duty to scan for hazards within the Anchorage." Pet. App. 338a.

Initial Third Circuit Decision. The court of appeals vacated most of the district court's opinion and remanded. It determined that the district court's narrative discussion of its factual findings and legal conclusions, and the "overall dearth of clear factual findings," constituted "a violation" of Federal Rule of Civil Procedure 52 and necessitated a remand. Pet. App. 291a-292a. Despite its conclusion that proper appellate review was not possible, the court of appeals proceeded to review the case and make its own legal determinations.

The court concluded that Frescati's contract claim is viable. The court of appeals acknowledged that third-party beneficiary status requires proof that the contracting parties *intended* to confer a benefit on the third party (not merely that a benefit accrued to it). Nevertheless, the court held that "the *Athos I*—and by extension, its owner, Frescati—was an implied" or "corollary" beneficiary of the safe berth clause in the voyage charter between Star and CARCO because the

clause "necessarily benefits the vessel." Pet. App. 277a, 295a.

The court of appeals then turned to the scope of CARCO's safe berth obligation and held that the district court had "incorrectly" adopted the Fifth Circuit's position in *Orduna* that a safe berth provision "require[s] only due diligence." Pet. App. 298a; see also *id.* at 304a ("we . . . decline to follow" the Fifth Circuit). Instead, the Third Circuit adopted what it called the Second Circuit's "longstanding formulation" that a safe berth provision guarantees the safety of the berth "without regard to the amount of diligence taken by the charterer." *Id.* at 303a-304a; see also *id.* at 303a (clause is an "'express assurance' warranty"), 304a n.18 (emphasizing the "strict nature" of the "warranty" and rejecting the argument that it "applies only to known hazards").

The court of appeals remanded the question whether the safe berth clause "was actually breached." Pet. App. 305a. It reasoned that the relevant inquiry was whether the berth was "unsafe for a ship of the *Athos I*'s agreed-upon dimensions and draft," and that the district court's findings did not answer that question. *Id.* at 304a-305a. Although Frescati's negligence claim was allowed to proceed because the court of appeals found that CARCO had a duty of care, the court remanded the questions of the exact standard of care required, breach of duty, and causation. *Id.* at 312a-324a.

The court of appeals denied rehearing and rehearing en banc. Pet. App. 345a-346a. This Court denied certiorari. *Citgo Asphalt Ref. Co.* v. *Frescati Shipping Co.*, 134 S. Ct. 1279 (2014).

District Court Decision on Remand. In the remand proceeding, CARCO newly faced the prospect

of strict liability to Frescati under CARCO's contract with Star. After a "successor-judge" hearing under Federal Rule of Civil Procedure 63 that took place over 31 days in 2015, the district court ruled for Frescati on the contract and negligence claims. With respect to the contract claim, the district court stated that it was bound by the Third Circuit's rulings that Frescati was a third-party beneficiary of the Star-CARCO contract and that the safe berth provision constitutes an absolute guarantee of the safety of the berth. Pet. App. 79a-80a, 165a-168a. Applying that strict liability standard, it found CARCO liable based upon its view that the safe berth provision was an express assurance that the *Athos I* would reach the berth safely, provided that it maintained a draft of 37 feet or less, and its finding that the vessel maintained that draft at the time of the casualty. *Id.* at 168a-171a.[3] The district court made its liability determination without any consideration of CARCO's diligence and notwithstanding the undisputed fact that CARCO had no knowledge of, and bore no fault for, the hidden anchor. The court awarded Frescati $55.5 million in damages, and awarded the

[3] The *Athos I*'s draft at the time of the casualty—the measurement from the water-line to the vessel's bottom—was sharply disputed. Since the district court could not rely on the vessel's own unreliable documentation to determine its draft, the court's finding that the vessel's draft was 37 feet or less ultimately depended upon its finding that at some unknown point in time the nine-ton anchor had sprung upright from its resting "flukes-down" position on the riverbed. That finding in turn depended upon the court's speculation—without evidentiary support—that an unidentified vessel's "sweeping anchor chain" somehow snagged the anchor and pulled it upright in time for the casualty. Pet. App. 126a-127a. And that finding further depended upon the notion that somehow the anchor returned to the "flukes-down" position in which it was discovered after the casualty. *Id.* at 127a-128a.

government $88 million for its subrogated contract claim. *Id.* at 258a-259a. Recognizing the incredibly unfair outcome of imposing the full costs of the oil spill on the one party least able to prevent it, the court then applied the doctrine of equitable recoupment and halved the government's award to $44 million. *Id.* at 233a-234a, 259a.

Subsequent Third Circuit Decision. A different panel of the Third Circuit affirmed the district court's damages awards. The new panel applied (with no further analysis) the strict liability contract ruling of the prior panel. Quoting the earlier opinion, the court below accepted that the safe berth obligation is "an express assurance made without regard to the amount of diligence taken by the charterer." Pet. App. 9a, 14a (quoting 718 F.3d at 203). Thus, it did not matter whether the district court's wholly speculative explanation for the accident—the "sweeping anchor chain" theory—was "plausible or implausible." *Id.* at 17a. And, like the district court, the panel made no inquiry into CARCO's conduct and found no shortcomings in the diligence that CARCO exercised as the vessel charterer.

The panel vacated the district court's judgment in favor of Frescati on the negligence claim. The district court had created from whole cloth a purported duty that CARCO should have used side-scan sonar in the federally-controlled Anchorage to discover potential hazards. Pet. App. 25a-29a, 43a. Thus, even though the panel did not dispute that CARCO bore no fault for the casualty, it affirmed the district court's damages award. The panel below also vacated the district court's equitable-recoupment holding, *id.* at 35a-39a, which increased CARCO's exposure by $44 million and resulted in an award of more than $140 million (plus tens of millions more in pre- and post-

judgment interest). CARCO thus was illogically and unfairly left to pay the entire tab for the oil spill.

SUMMARY OF ARGUMENT

I. The language of the safe berth clause provides no support for the court of appeals' interpretation that the clause is an implied warranty that imposes strict liability on charterers for all damages arising out of a vessel's entry, use, or exit from a designated berth. Under the plain language, the charterer gains the right to select the place or wharf of discharge, and the vessel gains the corresponding right to refuse an unsafe berth, with the charterer bearing any extra expenses resulting from the vessel master's refusal to enter the unsafe berth. Although the charterer's duty to select a "safe" berth naturally implies an obligation to exercise some diligence in doing so, nothing in the text can be construed as a warranty against unknown and unknowable risks.

Leading commentators Gilmore & Black adopt this textual view of safe berth clauses. They acknowledge that charterer liability for losses resulting from a ship entering an unsafe berth may be appropriate in certain circumstances, such as where a charterer has special knowledge of existing risks. The charterer's liability in these circumstances does not arise from the contract clause, however, but instead should be based on tort principles or other bodies of law. Under Gilmore & Black's purely textual view, safe berth clauses simply do not speak to accidents resulting from unforeseeable dangers such as occurred in this case.

The court of appeals' assertion that the clause's "always afloat" language supports the warranty interpretation misses the mark. This Court and others have given the words "always afloat" their

ordinary meaning, construing them simply to require that the berth or port permit the vessel to float, rather than strike the ground.

The record contains no evidence that the parties intended for CARCO to assume strict liability, and other provisions in the voyage charter contract confirm that this was not the parties' intent. This contextual evidence includes numerous negotiated express warranties in the contract, which show that the parties knew the importance of using express language to create warranties when that was their intent. The contract also required Star Tankers to maintain $1 billion in oil pollution insurance, which provides powerful evidence that the parties never intended for *CARCO* to bear strict liability for an oil spill.

II. The warranty interpretation conflicts with this Court's controlling precedent. This Court has never interpreted safe berth clauses as warranties. To the contrary, it disclaimed the warranty interpretation in *Atkins* v. *Fibre Disintegrating Co.*, 85 U.S. (18 Wall.) 272, 299 (1874), affirming a ruling of the district court. This Court's rulings in *Atkins* and its other safe berth decisions are consistent with Gilmore & Black's textual interpretation of safe berth clauses as limited provisions focused on resolving disputes over expenses incurred when designated discharge locations involved known or knowable hazards. This Court's rulings did not hold charterers liable for the consequences of unknown and unknowable hazards.

The warranty interpretation lacks a solid foundation. The court of appeals principally relied upon a line of Second Circuit decisions that adopted the warranty interpretation, but none of them addressed this Court's precedents or provided any reasoning to support the assertion that a safe berth

clause is an unqualified warranty that imposes strict liability. Moreover, earlier Second Circuit decisions did not always follow this approach and that court has never explained its abrupt shift. Given the uncertain origin and scant justification for the warranty interpretation, the Fifth Circuit properly rejected it in favor of the due diligence interpretation.

III. Maritime policy considerations demonstrate that maritime commerce is best served by interpreting safe berth clauses as requiring charterers to do no more than exercise due diligence.

The warranty interpretation is a form of strict liability for charterers, yet the rationale for this approach is a mystery. This Court has invoked special justifications to adopt strict liability in limited maritime contexts: liability should be imposed on the party best able to protect persons from hazardous equipment, and solicitude for the welfare of uniquely vulnerable maritime workers. These justifications are completely lacking in the context of safe berth clauses. Those purely contractual provisions merely allocate monetary responsibility between sophisticated commercial entities for economic losses. Because there is no economic or public policy justification for interpreting safe berth clauses as strict liability warranties, imposing strict and unlimited liability on charterers would be detrimental to maritime commerce.

The court of appeals' policy rationales for adopting the warranty interpretation are unsound. The court's principal rationale was that the charterer has superior information about a berth and port, but this is plainly not true today (if it ever was), where charterer and vessel owner both have abundant information from modern equipment and instantaneous information sources. A clear policy

disadvantage of the strict liability approach is that it precludes consideration of the facts and circumstances of individual cases, resulting in liability on wholly innocent charterers. The judgment against CARCO starkly illustrates the harsh results for which the strict liability approach has been rightly criticized.

The warranty interpretation also incongruously results in different standards of care for wharfingers and charterers. This Court held long ago that wharfingers are held to a "reasonable diligence" standard in operating their berths, *Smith* v. *Burnett*, 173 U.S. 430, 433 (1899), and the court of appeals reversed the negligence judgment against CARCO under that standard. No sound rationale exists for this Court to hold that charterers face a different, and significantly more onerous, standard of care when they select the berths for vessels that they hire.

Finally, the warranty interpretation produces an inequitable result in this case. The court of appeals' judgment, which shifts all liability to CARCO for an extraordinary accident that was not its fault, is grossly unfair. This is particularly true because Congress provided for a much different outcome in OPA, which includes a cost-spreading mechanism for oil spill cleanups. Congress provided for the OPA Trust Fund to absorb the entire cost of a spill, if caused by an unknown third party. That approach effectively spreads the costs to the whole industry. The judgment turns OPA on its head by requiring CARCO—not subject to any liability under OPA—to bear all of the costs, even though CARCO already paid tens of millions of dollars into the OPA Fund. The judgment should be reversed.

ARGUMENT

Where, as here, a contract "is a maritime one, and the dispute is not inherently local, federal law controls the contract interpretation." *Norfolk S. Ry.* v. *Kirby*, 543 U.S. 14, 22-23 (2004). This lawmaking power in the federal courts derives from their exclusive jurisdiction over maritime cases. *Id.*; U.S. Const. art. III, § 2, cl. 1; see *Air & Liquid Sys. Corp.* v. *DeVries*, 139 S. Ct. 986, 992 (2019) ("the federal courts fashion federal maritime law"). This Court's task, therefore, is to interpret the plain terms of the parties' agreement and "set an efficient default rule" for the maritime contract at issue. *Kirby*, 543 U.S. at 32.

In performing this task, the Court looks to the fundamental "purpose of the grant" of admiralty and maritime jurisdiction, which is "the protection of maritime commerce." *Exxon Corp.* v. *Cent. Gulf Lines, Inc.,* 500 U.S. 603, 608 (1991) (quoting *Sisson* v. *Ruby*, 497 U.S. 358, 367 (1990)); see *Jerome B. Grubart, Inc.* v. *Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 544 (1995). When formulating federal maritime principles, this Court "may examine, among other sources, judicial opinions, legislation, treatises, and scholarly writings." *DeVries*, 139 S. Ct. at 992.

I. THE COURT OF APPEALS' INTERPRETATION OF THE SAFE BERTH CLAUSE AS A WARRANTY MISREADS THE CONTRACTUAL TEXT.

Maritime contracts are "construed like any other contracts," that is, "by their terms and consistent with the intent of the parties." *Kirby*, 543 U.S. at 31; see Restatement (Second) of Contracts § 212(1) (1981) ("The interpretation of an integrated agreement is directed to the meaning of the terms of the writing or

writings in light of the circumstances"). The appropriate place to start is therefore the language of the safe berth clause. That language provides no support for the court of appeals' interpretation of the safe berth clause as a warranty that imposes liability regardless of fault.

The text of the safe berth provision in the Star-CARCO agreement provides:

> [t]he vessel shall load and discharge at any safe place or wharf, . . . which shall be designated and procured by the Charterer, provided the Vessel can proceed thereto, lie at, and depart therefrom always safely afloat, any lighterage [transfer of cargo] being at the expense, risk and peril of the Charterer. . . .

Add. 8a.

A. The Terms Of The Safe Berth Clause Do Not Provide For Liability Regardless Of Fault.

1. Under the plain language of the safe berth provision, the charterer gains the right to select the place or wharf of discharge: the discharge location "shall be designated and procured by the Charterer." Add. 8a. The requirement that the berth be a "safe" berth has been interpreted to mean that "during the relevant period of time, 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." Julian Cooke et al., *Voyage Charters* ¶ 5A.21 (4th ed. 2014) ("Cooke").

Under the "provided" clause, the vessel gains the corresponding right to refuse an unsafe berth, with

the charterer bearing any extra expenses resulting from the vessel master's refusal to enter the unsafe berth. See Grant Gilmore & Charles L. Black, Jr., *The Law of Admiralty* § 4-4, at 204 (2d ed. 1975) ("Gilmore & Black")[4] ("It is clear on the face of it that, if the port or the berth is unsafe, the master is excused from taking his ship in, and the charterer must bear the extra expense, such as lighterage, entailed by the refusal."); 2 Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 11-10 (6th ed. 2018) ("Schoenbaum") ("the ship can refuse to proceed to the port nominated without being in breach of the charter"); Peter G. Hartman, *Safe Port/Berth Clauses: Warranty or Due Diligence?*, 21 Tul. Mar.

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[4] This Court routinely cites Gilmore & Black on admiralty matters. *See, e.g.*, *Dutra Grp.* v. *Batterton*, No. 18-266, slip op. at 7-8 (U.S. June 24, 2019); *Atl. Sounding Co.* v. *Townsend*, 557 U.S. 404, 412, 413, 423-24 (2009); *Stewart* v. *Dutra Constr. Co.*, 543 U.S. 481, 487-88 (2005); *Kirby*, 543 U.S. at 24; *Vimar Seguros y Reaseguros, S.A.* v. *M/V Sky Reefer*, 515 U.S. 528, 533-34 (1995); *Chandris, Inc.* v. *Latsis*, 515 U.S. 347, 354, 356 (1995); *Howlett* v. *Birkdale Shipping Co.*, 512 U.S. 92, 97, 102 (1994); *Sw. Marine, Inc.* v. *Gizoni*, 502 U.S. 81, 91-92 (1991); *McDermott Int'l, Inc.* v. *Wilander*, 498 U.S. 337, 342-43 (1991); *Miles* v. *Apex Marine Corp.*, 498 U.S. 19, 25 (1990); and *Dir., Office of Workers' Comp. Programs* v. *Perini N. River Assocs.*, 459 U.S. 297, 310-11, 324 n.33 (1983).

The principal maritime Circuits also look to Gilmore & Black as a leading treatise. *See, e.g.*, *Man Ferrostaal, Inc.* v. *M/V Akili*, 704 F.3d 77, 85 (2d Cir. 2012) ("the classic admiralty treatise"); *Neely* v. *Club Med Mgmt. Servs., Inc.*, 63 F.3d 166, 176 (3d Cir. 1995) (en banc) ("a leading admiralty treatise"); *Boudreaux* v. *Am. Workover, Inc.*, 680 F.2d 1034, 1046 (5th Cir. 1982) (en banc) ("the highly respected Gilmore and Black"); *Capt'n Mark* v. *Sea Fever Corp.*, 692 F.2d 163, 167 (1st Cir. 1982) ("[a] leading treatise"). Indeed, a Westlaw search found that the Gilmore & Black treatise has been cited 960 times by this Court and the federal courts of appeals, including 56 times by this Court and more than 50 times by the Third Circuit.

L.J. 537, 550 (1997) ("Hartman") ("the very terminology of these clauses indicates that the master has the right to refuse to enter an unsafe port or dock at an unsafe berth."). The vessel's right of refusal provides a significant protection to vessel owners because "[c]ourts and arbitrators have generally accorded great latitude to a master's decision to refuse to enter a port or berth on the grounds that it is unsafe." Cooke, *supra*, at ¶ 5A.34.

Although the charterer's duty to select a "safe" berth naturally implies an obligation to exercise some diligence in doing so, nothing in the text of the provision can be construed as a warranty against unknown and unknowable risks. And there is no language assigning all risk of loss to the charterer, regardless of fault. Leading commentators, Gilmore & Black, state that safe berth clauses expressly provide the vessel with the right to refuse a berth that the master regards as unsafe, and require charterers to pay the shipowner's expenses attendant to such a refusal (*e.g.*, lighterage, delay charges). But they go on to argue that "it is by no means necessary that [safe berth clauses] be given the quite different meaning of creating an affirmative liability of charterer to ship, in case of mishap." Gilmore & Black, *supra*, § 4-4 at 205. In their view, "[v]ery clear language" should be required in order for "liability [to be] shifted to the charterer," and "this clarity of language is missing" from standard clauses such as the ASBATANKVOY clause. *Id.*

Given the narrow circumstances addressed by safe berth clauses, Gilmore & Black persuasively argue that the clauses cannot support the sweeping liability imposed on charterers by the courts below. They acknowledge that charterer liability for losses resulting from a ship entering an unsafe berth may

be appropriate in "compelling special circumstances," such as where a charterer's "special knowledge or actions make it reasonable to charge him." *Id.* at 205, 207. Special circumstances may exist, for example, where the charterer has knowledge of conditions that render the berth unsafe but the master lacks such knowledge, or where the charterer should reasonably have a special "duty of inquiry." *Id.* at 205. The charterer's liability in these circumstances does not arise from the safe berth clause, however, but instead because "it ought to be held to be an actionable wrong for [the charterer] to invite the ship without warning into a peril known to him, with or without the [safe berth] clause[]." *Id.* (noting that absent special factors, there is "no reason" for holding charterers liable for mishap "on the basis of the safe-port and safe-berth clauses"). Thus, Gilmore & Black adopt a textually faithful view of safe berth clauses as limited provisions that resolve disputes over expenses incurred when masters refuse designated discharge locations. The clauses simply do not speak to accidents resulting from unforeseeable dangers such as occurred in this case. Liability for such events, in Gilmore & Black's view, should arise out of tort principles or other sources of law.

The Fifth Circuit properly adopted Gilmore & Black's textual analysis. The court agreed that giving safe berth clauses the "meaning of creating an affirmative liability of charterer to ship, in case of mishap" is "by no means necessary." *Orduna*, 913 F.2d at 1156-57 (quoting Gilmore & Black, *supra*, § 4-4 at 205).[5] The court therefore construed safe berth clauses as "impos[ing] upon the charterer a duty of

[5] The safe berth clause in *Orduna* "provided that the charterers should designate 'safe discharging berths [the] vessel being always afloat.'" 913 F.3d at 1155 n.6.

due diligence to select a safe berth." *Id.* at 1157. On the facts of the case before it, the Fifth Circuit vacated the district court's judgment, which had held a non-negligent charterer liable for damage to a ship in a berth that occurred when it was struck by a steel loading arm that fell from a grain elevator tower owned by another company. *Id.* The liability finding of the district court in *Orduna* illustrates the onerous reach of the warranty approach in holding charterers liable for accidents that they had no ability to prevent. The Fifth Circuit properly rejected it as a matter of law.

Notably, the Association of Ship Brokers & Agents (USA) Inc. ("ASBA")—the trade association that promulgated and updates the ASBATANKVOY form—rejects any suggestion that the text of the form clause should be construed as a warranty. To the contrary, it has informed the Court that the safe berth provision in the CARCO-Star contract "does not specify whether it imposes a strict-liability warranty or a due-diligence obligation." MLA/ASBA Petition-stage Br. 23. This confirms that the warranty interpretation has no foundation in the text of the provision.

2. The court of appeals asserted that the clause's "always afloat" language "plainly suggests an express assurance," but it offered no explanation or support. Pet. App. 304a; see also U.S. Opp. 13-14. As noted, ASBA repudiates this view of the form language that it created. MLA/ASBA Petition-stage Br. 23. And rightly so, because that simple phrasing is hardly "very clear language" articulating a risk-allocation between the parties, much less an onerous allocation of unforeseeable risk to the charterer of liability without regard to fault.

Indeed, this Court and others have given the words "always afloat" their ordinary meaning, construing them simply to require that the berth or port permit the vessel to float, rather than strike the ground (or encounter physical barriers that block the ship's path). In *Mencke* v. *Cargo of Java Sugar*, 187 U.S. 248, 253 (1902), for example, this Court explained that "a ship could not be said to be afloat, whether the obstacle encountered was a shoal or a bar in the port for which she could not proceed, or a bridge under or through which she could not pass." The court in *Tweedie Trading Co.* v. *New York & Boston Dyewood Co.*, 127 F. 278, 280-81 (2d Cir. 1903), similarly explained that "the provision that the vessel shall load and discharge where she can always safely lie afloat can be given no other construction than that the respondent became bound to assign to the ship a berth in a suitable depth of water." See also *Crisp* v. *U.S. & Australasia S.S. Co.*, 124 F. 748, 749-50 (S.D.N.Y. 1903) ("'always safely lie afloat'" implies "that a port to be named by the charterer shall be one where the vessel can safely get with her whole cargo and can discharge her whole cargo without touching the ground"); Cooke, *supra*, at ¶ 5.60 (explaining that although "[a] vessel may lie aground and be safe," the purpose of "'lie always afloat'" language is to "put the matter beyond doubt" and specify that the vessel "should remain afloat"); Gilmore & Black, *supra*, § 4-4 at 203 n.31 (noting that without "always afloat" language, a "mere stipulation for a safe berth does not always imply an undertaking that the vessel will be afloat at low tide").

These interpretations of "always afloat" reflect the recognition that grounding poses a significant risk of vessel damage, which owners wish to avoid, and which charterers can foresee and prevent by choosing

a berth or port with sufficient water depth. Given this straightforward meaning of "always afloat," the court of appeals' unsupported assertion that the words instead are some sort of code for strict liability for all risks incurred in accessing or using a port or berth is untenable.

B. The Parties Did Not Intend For CARCO To Assume Strict Liability.

As to the parties' intent, the court of appeals did not cite any record evidence—and there is none—remotely indicating that the intention of the parties was for CARCO to assume absolute liability for all possible hazards (including unknown hazards) near the designated berth. Indeed, it would be foolhardy for a charterer to assume sweeping liability for *any* accident that occurs as a ship approaches the charterer's nominated destination, including accidents caused by hazards that were created by others and of which the charterer is unaware.

Moreover, other provisions in the voyage charter contract confirm that this was *not* the parties' intent. For example, the parties made numerous *express* warranties in the charter. The charter contains the "Charterer's warrant that all necessary details required by [U.S. Customs and Border Patrol] for clearance of the cargo" would be supplied prior to the discharge port. Add. 26a. It also includes more than a dozen owner "warrant[ies]" that bound Star Tankers, including warranties that the vessel would be in compliance with all U.S. Coast Guard regulations, Add. 30a; Star Tankers would have a drug and alcohol abuse policy in effect during the charter, Add. 41a; the vessel would be in compliance with international and U.S. tanker safety regulations, Add. 43a; the vessel had not traded to Cuba in the last six months, Add. 44a; and the vessel

had submitted an oil spill response plan to the U.S. Coast Guard in compliance with OPA, Add. 44a-45a. These clauses make plain that the parties knew the importance of using express language to create warranties when that was their intent. Accordingly, the absence of any express warranty language in the safe berth clause confirms that the parties did not intend for it to be a warranty.[6]

One of the owner warranties is also noteworthy because of its substance. Star Tankers warranted that it would maintain $1 billion in "insurance coverage for oil pollution" throughout the period of the charter. Add. 42a. This provision requiring Star Tankers to carry insurance for the precise type of loss that occurred in this case indicates that the parties contemplated that Star Tankers or its insurer, rather than CARCO, would pay the expenses and damages for an oil spill cleanup. It therefore provides powerful evidence that the parties never intended for the safe berth clause to render CARCO strictly liable for an oil spill, particularly to an entity not a party to the contract. Cf. Gilmore & Black, *supra*, § 4-4 at 205 (noting that the fact that vessel owners carry insurance covering damage to the ship "cannot be irrelevant to an evaluation of the suitability of the allocation of risk" under safe berth clauses).

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[6] The voyage charter expressly provided that Star Tanker's duty to provide a seaworthy vessel was a due diligence obligation. Add. 4a. As explained by Cooke, *supra*, at ¶ 52.5, this due diligence language in the ASBATANKVOY form "merely reflect[ed]" the rule that otherwise applied under "Article IV rule 1 of the Hague Rules" (International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, Aug. 25, 1924, https://www.jus.uio.no/english/services/library/treaties/07/7-04/hague-rules.xml).

In addition, Paragraph 19 of the ASBATANKVOY form (General Exceptions Clause) provides that a charterer is not liable for loss or damages resulting from "perils of the seas." Add. 14a. "Perils of the sea[s]" are "those perils which are peculiar to the sea," and which are "unforeseeable" and "cannot be guarded against by the ordinary exertions of human skill and prudence." *Ferrara* v. *A. & V. Fishing, Inc.,* 99 F.3d 449, 454 (1st Cir. 1996). It has long been established that "perils of the seas" include collision with a submerged object. See, *e.g.*, *The G.R. Booth*, 171 U.S. 450, 461 (1898) (referring to a "ship coming against a rock or shoal or other external object" as a "peril of the sea"); *Ferrara*, 99 F.3d at 454 ("striking a submerged object" is a "peril of the sea"); *Campbell Soup Co.* v. *Fed. Motorship Corp.*, 1935 WL 57939, 1935 A.M.C. 634, 641 (S.D.N.Y. Feb. 25, 1935) ("vessel striking an unknown submerged body" is "a peril of the sea"); 1 William Tetley, *Marine Cargo Claims*, at 1060 (4th ed. 2008) (perils of the sea include "the ship striking sunken rock"). This General Exceptions clause therefore further confirms that the parties did not intend for the safe berth clause to impose liability on CARCO—strict or otherwise—for maritime hazards that it could not foresee or prevent, such as the *Athos I* striking the unknown anchor. To have held otherwise misconstrues the nature of the safe berth clause.

II. THE COURT OF APPEALS' INTERPRETATION OF THE SAFE BERTH CLAUSE AS A WARRANTY IS CONTRARY TO THIS COURT'S DECISIONS AND LACKS ANY SOUND LEGAL FOUNDATION.

In addition to being atextual and at odds with the contract's contextual language, the court of appeals' interpretation of the safe berth clause as a warranty

is contrary to this Court's precedent and lacks a sound foundation in judicial opinions and other maritime authority.

A. The Warranty Interpretation Conflicts With This Court's Controlling Decisions.

This Court's decisions involving safe berth clauses date back to the nineteenth century and have stood for more than 100 years. The Court has never interpreted the clauses as warranties. Instead, it has disclaimed the warranty interpretation.

This Court first addressed a safe berth clause in *Atkins* v. *Fibre Disintegrating Co.*, 85 U.S. (18 Wall.) 272, 299 (1874), affirming a ruling of the district court. See *Atkins* v. *Fibre Disintegrating Co.*, 2 F. Cas. 78 (E.D.N.Y. 1868) (No. 601) (Benedict, J.). The district court held that a charterer was not liable under a safe berth clause[7] for damage that a vessel incurred when it struck a reef while departing from Port Morant, Jamaica after the breeze failed. The district court did not hold that the clause was a warranty. To the contrary, it held that the charterer's obligation was limited to providing "a port which this vessel could enter and depart from without legal restraint, and *without incurring more than the ordinary perils of the seas*." *Id.* at 79 (emphasis added).

The court's interpretation that the selected port could not pose "more than" the ordinary perils of the seas clearly indicates that the charterer does not guarantee that the port is free of *all* perils and that

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[7] The charter contract provided that the vessel would load a cargo of bamboo in Kingston, Jamaica and that the charterer had the privilege of sending the vessel to a "second safe port" to load additional cargo. 2 F. Cas. at 79.

the charterer undertakes no duty and assumes no liability with respect to "ordinary perils." Applying that standard, the district court found that Port Morant could not "be held to be a safe port" for the vessel at issue because it posed an unusual and known hazard: any ship of the vessel's size "must strike the reefs if, by chance, the breeze should fail her while passing in or out." *Id.* The court nevertheless held that the charterer was not liable because the ship master had knowledge of this danger and did not exercise his right to reject the unsafe port. *Id.* The district court also spurned the vessel owner's argument that the charterer's agent had made "representations which amounted to a warranty." *Id.* at 79-80.

This Court affirmed the district court's ruling. The Court mostly addressed a jurisdictional issue, but also addressed the merits and stated that it had conducted "a careful examination of the record" and "found no reason to dissent from the views of the learned district judge." 85 U.S. at 299. It explained that it would "announce the same conclusions" as the district judge because they were "clearly expressed" and "ably vindicated." *Id.* The Court thus endorsed the district court's view that the safe berth clause is *not* a warranty, and instead disclaims the charterer's liability for "ordinary perils" of maritime navigation.

The court of appeals tersely brushed *Atkins* aside in a footnote, asserting that the outcome was attributable to the fact that the ship's master was "fully aware of the port's dangers and yet did not object." Pet. App. 301a-302a n.14. While this is a correct characterization of the outcome, it ignores that this Court also approved the district court's interpretation of the safe berth clause as a disclaimer

of the charterer's liability for "ordinary perils" of maritime transportation.

Notably, none of the Second Circuit decisions that the court of appeals followed in adopting the warranty approach addressed, or even cited, *Atkins*. The Fifth Circuit, in contrast, discussed and relied upon *Atkins* in rejecting the warranty approach. *Orduna*, 913 F.2d at 1156-57. Commentators also have rightfully criticized the warranty approach as "inconsistent" with the better reading of *Atkins*. See Gilmore & Black, *supra*, § 4-4 at 207; see also *id.* at 205 (noting that *Atkins* has never been "overruled or weakened" by this Court).

Frescati and the United States argued at the petition stage that this Court's subsequent decision in *The Gazelle & Cargo*, 128 U.S. 474 (1888), embraced the warranty approach. Frescati Opp. 13, 15; U.S. Opp. 12. This is wishful thinking. In *The Gazelle*, this Court did not address whether the safe berth clause at issue[8] provided a warranty (a term not used in the opinion). Tellingly, the Second Circuit never relied upon *The Gazelle* in any of its decisions interpreting safe berth clauses as warranties.

The question in *The Gazelle* was whether the charterer was liable for expenses and lost revenue resulting from the ship master's refusal of a berth with a known and insurmountable safety hazard: the berth was "in a fjord or inlet having a bar across its mouth, which it was impossible for the Gazelle to pass." 128 U.S. at 485. This Court stated that the

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[8] The safe berth clause in *The Gazelle* provided that "the charterers were bound to order the vessel 'to a safe, direct, Norwegian or Danish port, or as near thereunto as she can safely get, and always lay and discharge afloat.'" *The Gazelle*, 128 U.S. at 485.

"clear meaning" of the safe berth clause was that the charterer was bound to order the Gazelle "to a port which she can safely enter with her cargo." *Id.* It reasonably found that the charterer was "rightly held to be in default and answerable in damages" because it had "insisted on ordering her" to the obviously dangerous port. *Id.* at 486. The Court therefore found the charterer liable for the vessel owner's lost freight revenue under the charter and other expenses. *Id.* at 486-87. Because the charterer in *The Gazelle* designated a berth with a *known* hazard that the master rightly refused, its liability for damages under the safe berth clause was clear and this Court had no occasion to address whether the clause imposed strict liability on the charterer for unknown and unknowable risks.

This Court reached a similar result in *Mencke*, 187 U.S. 248. The Court again did not describe the safe berth clause at issue[9] as a warranty; in fact it never used that term. The question in *Mencke* was whether the charterer was liable for extra expenses resulting from the ship master's refusal of a berth that would have required the ship to pass under the Brooklyn Bridge—which the ship could not do because its steel mast was too tall. This Court sensibly found that "an overhead bridge which prevents access to the place designated for the discharge quite as effectively renders it unsafe for the ship as a sandbar or other obstacle under the water." *Id.* at 257. It therefore held that the charterer was liable for the additional

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[9] The safe berth clause in *Mencke* provided that the ship would "discharge at New York or Boston or Philadelphia or Baltimore, or so near the port of discharge as she may safely get and deliver the same, always afloat, in a customary place and manner, in such dock, as directed by charterers, agreeably to bills of lading." *Mencke*, 187 U.S. at 251.

costs incurred when the cargo had to be unloaded at a different dock. Like *The Gazelle*, *Mencke* involved a known hazard that rendered the charterer's chosen berth obviously unsafe and unsuitable, and provides no support for the notion that a safe berth clause imposes strict liability on the charterer for all other risks.

The outcomes in *Atkins*, *The Gazelle*, and *Mencke* are in accord with Gilmore & Black's interpretation of the text of safe berth clauses. All of these cases involved charterers who designated berths with *known* features that rendered them hazardous to the chartered vessels. The charterers in *The Gazelle* and *Mencke* were found liable for the expenses and economic damages that the vessel owners incurred when the ship masters justifiably exercised their right to refuse the unsafe berths, which is precisely what the clauses provide. In *Atkins*, the charterer was found not liable for damage the vessel incurred when departing the berth because the ship master had knowledge of the danger and did not exercise his right to reject the unsafe berth. That is, because the master had a right to refuse the berth, and the charterer did not have any "special knowledge" of the berth's risks that was unavailable to the master, the charterer was not liable for the ship damage.

None of these decisions involved a charterer's liability with respect to an *unknown and unknowable* hazard, as in this case. Nevertheless, this Court's interpretation of the safe berth clause in *Atkins*—as disclaiming the charterer's liability for "ordinary perils of the seas"—convincingly suggests that CARCO should not be held liable for the casualty that damaged the *Athos I*. That casualty was caused by an unknown submerged object, which is a classic peril of the sea to which vessels are subject during

any maritime voyage. See, *supra*, at 27. Accordingly, under this Court's interpretation in *Atkins*, the safe berth clause does not remotely provide a basis for shifting all costs of the multi-million dollar environmental cleanup to CARCO.

B. The Warranty Interpretation Lacks Any Sound Legal Foundation.

In adopting the interpretation that the safe berth clause is a warranty, the court of appeals sided with what it characterized as the Second Circuit's "longstanding" interpretation, and asserted that the Fifth Circuit's approach "deviated from this well-established standard." Pet. App. 303a-304a. At the petition stage, Frescati and the United States repeated the refrain that the warranty interpretation is an "established" and "settled" understanding, asserting that it is grounded in "130 years of precedent from this Court and more than 80 years of case law from the Second Circuit." Frescati Opp. 11, 13; U.S. Opp. 13. These assertions do not withstand scrutiny. The Second Circuit decisions upon which the court of appeals relied in adopting the warranty interpretation were: *Venore Transp. Co.* v. *Oswego Shipping Corp.*, 498 F.2d 469, 472-73 (2d Cir. 1974) (voyage charterer "had an express obligation to provide a *completely* safe berth") (emphasis added); *Paragon Oil Co.* v. *Republic Tankers, S.A.*, 310 F.2d 169, 173 (2d Cir. 1962) (clause is a "warranty"); *Park S.S. Co.* v. *Cities Serv. Oil Co.*, 188 F.2d 804, 806 (2d Cir. 1951) (clause is "an express assurance that the berth [is] safe"); and *Cities Serv. Transp. Co.* v. *Gulf Ref. Co.*, 79 F.2d 521, 521 (2d Cir. 1935) (per curiam) ("the charter [contract is] itself an express assurance, on which the master [is] entitled to rely, that at the berth 'indicated' the ship would be able to lie 'always afloat'"). See Pet. App. 299a-300a.

First, the Second Circuit decisions are not derived from or consistent with this Court's earlier safe berth decisions: *Atkins*, *The Gazelle*, and *Mencke*. As noted, the Second Circuit decisions do not mention, much less discuss, any of those precedents. In particular, the Second Circuit did not address this Court's agreement in *Atkins* that the safe berth clause was *not* a warranty, because it did not create any charterer liability for "ordinary perils" of the seas. Accordingly, the Second Circuit's warranty approach is "inconsistent" with *Atkins*. Gilmore & Black, *supra*, § 4-4 at 207.

Second, one might assume from the court of appeals' reliance on the Second Circuit's opinions that they provide a cogent rationale for the warranty approach and a thorough treatment of the issue, but that is plainly not so. The Second Circuit's opinions contain no reasoning or discussion to support the court's naked assertion that a safe berth clause is an unqualified warranty that imposes strict liability. For example, *Cities Service*, 79 F.2d 521, the oldest decision, is a single-paragraph, *per curiam* opinion in which the charterer was found liable for a ship's grounding because the port captain had given "express assurance to the master at the time that the berth was fair." *Id.* In the last sentence of the brief opinion, the court reasoned in the alternative that even if such assurances had not been given, "the charter party was itself an express assurance, on which the master was entitled to rely, that at the berth 'indicated' the ship would be able to lie 'always afloat.'" *Id.* The court, however, provided no reasoning or authority in support of that conclusion.

None of the subsequent Second Circuit decisions—*Park S.S. Co.*, *Paragon*, and *Venore*—shed any more light on the origin of the warranty interpretation or

what interests it serves. These decisions do little more than rely upon and repeat the unsupported misinterpretation of safe berth clauses in *Cities Service*, which then became an unverified self-fulfilling statement. The decisions contain no analysis of why the charterer should be held strictly liable, either under the contract or as a matter of maritime policy. Or why the issue should not be resolved solely by tort law or some other source of law that deals directly with the type of injury incurred.

The handful of commentators who characterize the safe berth clause as a warranty, Pet. App. 303a, do not supply any better rationale for the warranty interpretation than the Second Circuit does. These treatises do little more than recite the warranty interpretation, without providing any commentary or explanation for its basis. See Schoenbaum, *supra*, § 11-10 & n.1 (citing Second Circuit decisions); 2A Michael F. Sturley, *Benedict on Admiralty* § 175, at 17-24 to 17-25 (7th ed. 2014) (same); Terence Coghlin et al., *Time Charters* ¶¶ 10A.3-10A.6 (7th ed. 2014) ("Coghlin") (same); Bernard Eder et al., *Scrutton on Charter Parties and Bills of Lading*, § IX, art. 85, at 166 (23d ed. 2017). The Coghlin treatise endorses the warranty interpretation on the ground that it is "a matter of contract" and an accepted "custom of the trade," Coghlin, *supra*, at ¶ 10A.10, but these conclusory assertions ignore this Court's interpretation in *Atkins* and the existing circuit split on the meaning of the clause, and they provide no justification for the interpretation.

Third, contrary to the court of appeals' suggestion that the Second Circuit has unvaryingly adhered to the warranty approach, prior to *Cities Service* the Second Circuit held in several cases that a charterer or consignee who selects a berth is only required to

exercise reasonable care under the circumstances, and is not an insurer or warrantor. See, *e.g.*, *Plymouth Transp. Co.* v. *Red Star Towing & Transp. Co.*, 20 F.2d 357, 358 (2d Cir. 1927) ("reasonable care to ascertain the condition of a berth and give notice of any concealed danger"); *M. & J. Tracy, Inc.* v. *Marks, Lissberger & Son, Inc.*, 283 F. 100, 102 (2d Cir. 1922) (safe berth duty requires "exercise [of] due care according to the circumstances," and is "no warranty or insurance"); *Hastorf* v. *O'Brien*, 173 F. 346, 347-48 (2d Cir. 1909) ("ordinary care"). Tellingly, under the court's "due care" standard, the consignee in *M. & J. Tracy* was found not liable for the sinking of a barge by a boulder on the river bottom, where the boulder was unknown to the consignee and the public.

These cases apparently did not involve voyage charters, but *Cities Service* failed to address this line of authority, or explain the abrupt shift to the warranty approach. See Hartman, *supra*, at 541 (*Cities Service* was a "departure from the previous prudent man standard"); J. Bond Smith, Jr., *Time and Voyage Charters: Safe Port/Safe Berth*, 49 Tul. L. Rev. 860, 862 (1975) ("Smith") ("Until comparatively recently, the decisions, with few exceptions, held that the charterer's liability under safe port clauses was not that of an insurer or warrantor."). Thus, history does not support strict liability.

Given the uncertain origin and scant justification for the warranty interpretation, the Fifth Circuit properly took a fresh look at the issue in *Orduna*, 913 F.2d 1149. It considered the fact that distinguished commentators such as Gilmore & Black have "strongly criticized" the Second Circuit's liability-without-fault approach, including because it has no foundation in the contract language, 913 F.2d at

1156; that the Second Circuit's approach is contrary to this Court's decision in *Atkins*, *id.* at 1156-57; and that the Second Circuit has not always followed the warranty interpretation, *id.* at 1156. It also examined the relevant maritime policy considerations (discussed further below) and concluded that "no legitimate legal or social policy is furthered by making the charterer warrant the safety of the berth it selects." *Id.* at 1157. The Fifth Circuit therefore held that a safe berth clause "does not make a charterer the warrantor of the safety of a berth," and "[i]nstead the safe berth clause imposes upon the charterer a duty of due diligence to select a safe berth." *Id.* There is no question that CARCO did all that it could to select a safe berth.

As demonstrated below, the Fifth Circuit's interpretation of the safe berth clause is the rule that this Court should adopt.

III. MARITIME COMMERCE IS BEST SERVED BY INTERPRETING SAFE BERTH CLAUSES AS IMPOSING AT MOST A DUTY OF DUE DILIGENCE ON CHARTERERS.

This Court should reject the court of appeals' interpretation of the safe berth clause as a warranty because it is inconsistent with the Court's decisions and the contractual text and context. Even if the Court were writing on a blank slate, however, the court of appeals' interpretation is detrimental to maritime commerce. See *Kirby*, 543 U.S. at 32 (the Court's task is to "set an efficient default rule" for the maritime contract at issue). As noted, the fundamental "purpose of the grant" of admiralty and maritime jurisdiction is "the protection of maritime commerce." *Exxon Corp.*, 500 U.S. at 608 (quoting *Sisson*, 497 U.S. at 367).

A. Strict Liability Is Unwarranted And Detrimental To Maritime Commerce.

The warranty interpretation is a form of "strict liability" for charterers. *Orduna*, 913 F.2d at 1157; Pet. App. 341. Under that rule, charterers are subject to "liability without fault" for losses caused by most factors (excluding abnormal weather or other occurrences, or negligence by the master). *Orduna*, 913 F.2d at 1156. And the charterer's liability under the warranty approach is unlimited, as the massive judgment in this case illustrates.

The rationale for this counterintuitive approach is, however, a mystery. Neither the Second Circuit decisions, nor the treatises, provide any justification for strict liability in this context. There is none. The traditional bases upon which the law imposes strict liability are wholly lacking here. As a result, subjecting charterers to strict and unlimited liability would be detrimental to maritime commerce.

Strict liability is not common in maritime law. Where it does apply, its special justifications have no application to safe berth clauses. In *East River Steamship Corp.* v. *Transamerica Delaval Inc.*, 476 U.S. 858, 865 (1986), for example, this Court "recogniz[ed] products liability, including strict liability, as part of the general maritime law." The Court reasoned that its "precedents relating to injuries of maritime workers long have pointed in th[e] direction" of strict products liability, *id.*, invoking its decisions recognizing strict liability for breach of the vessel owner's duty to provide a seaworthy vessel, *Seas Shipping Co.* v. *Sieracki*, 328 U.S. 85, 94 (1946), and for breach of the stevedore's implied warranty of workmanlike service, *Italia Societa per Azioni di Navigazione* v. *Or. Stevedoring Co.*, 376 U.S. 315, 322 (1964). This Court explained

that its "rationale in [the maritime worker] cases—that strict liability should be imposed on the party best able to protect persons from hazardous equipment—is equally applicable when the claims are based on products liability." 476 U.S. at 866.

The public policy rationale for strict liability in the maritime products and worker contexts—that manufacturers, vessel owners, and stevedores are best able to prevent injury from hazardous products, equipment, and vessel conditions—does not support strict liability for charterers under safe berth clauses. Manufacturers who make products and market them to the public are subject to unique duties because they "can anticipate some hazards and guard against the recurrence of others, as the public cannot." *Escola* v. *Coca Cola Bottling Co. of Fresno*, 150 P. 2d 436, 441 (Cal. 1944) (Traynor, J., concurring) (cited in *East River*, 476 U.S. at 866-67). Similarly, stevedores are subject to strict liability in contexts where they are "best situated to adopt preventive measures and thereby to reduce the likelihood of injury," *i.e.*, where the "injury-producing and defective equipment is under the[ir] supervision and control." *Or. Stevedoring Co.*, 376 U.S. at 324.

Charterers, by contrast, need not own or operate the berths that they select pursuant to safe berth clauses. In their capacity as charterers, they lack both supervision and control over the pertinent facilities and sources of risk, which are the critical factors that support strict liability against manufacturers and those who injure maritime workers. In addition, as explained below, vessel owners have access to full information concerning whether a particular berth is safe for a particular vessel, and vessel captains (not charterers) make the navigational decision to bring the vessel into the

berth. See, *infra*, at 43-44. Indeed, the underlying premise of the vessel master's right to refuse an unsafe berth is that vessel owners have the superior ability to assess the risks of the designated berth. This scheme forecloses any argument that *charterers* are in a unique position to prevent injury, which is the classic justification for imposing strict liability.

This Court's imposition of strict liability in the maritime worker context is also based on maritime law's "special solicitude for the welfare of those who undertake to venture upon hazardous and unpredictable sea voyages." *DeVries*, 139 S. Ct. at 995; *Dutra Grp.* v. *Batterton*, No. 18-266, slip op. at 7-8, 18 (U.S. June 24, 2019) (explaining that this Court "transformed" the vessel owner's duty to provide a seaworthy vessel from due diligence to strict liability based on "humanitarian" considerations). As this Court explained in *Sieracki*, the vessel owner's duty to furnish a seaworthy vessel exists regardless of fault because of "the hazards of marine service which unseaworthiness places on the men who perform it," workers' "helplessness to ward off such perils," and "the harshness of forcing them to shoulder alone the resulting personal disability and loss" from personal injuries. 328 U.S. at 93-94. These "humanitarian" concerns have no purchase in the context of safe berth clauses, which allocate monetary responsibility between sophisticated commercial entities for economic losses. Indeed, this Court acknowledged in *Dutra Grp.*, slip op. at 18, that "in contemporary maritime law," the "special solicitude to sailors has only a small role to play."

It also is worth noting that outside the maritime context, strict liability is strictly confined. In American tort law, strict liability is "not so common." Dan B. Dobbs et al., *The Law of Torts* § 437 (2d ed.

2011). It is principally limited to "two factual settings" apart from products liability: harms caused by animals, and harms caused by abnormally dangerous activities. *Id.*; see Restatement (Second) of Torts §§ 504-524A (1977). Selecting berths for maritime voyages is not an "abnormally dangerous activity," and Frescati did not assert a tort claim against CARCO under a strict liability theory.

Because there is no public policy or economic justification for interpreting safe berth clauses as strict liability warranties, imposing strict and unlimited liability on charterers would be detrimental to maritime commerce. Commentators have long recognized that open-ended liability can discourage maritime commerce and render insurance unattainable. See Schoenbaum, *supra*, § 15-1; Lawrence I. Kiern, *Liability, Compensation, and Financial Responsibility Under the Oil Pollution Act of 1990: A Review of the Second Decade*, 36 Tul. Mar. L.J. 1, 43-45 (2011).

This Court similarly pointed to the chilling effects of open-ended liability when it rejected products liability claims for purely economic damages as part of the general maritime law in *East River*, 476 U.S. 858. The Court noted that such damages were problematic because they "could subject the manufacturer to damages of an indefinite amount" or "for vast sums." *Id.* at 874.

Congress has similarly recognized in several statutes governing maritime commerce that open-ended liability is detrimental. For example, 46 U.S.C. app. § 183, the basis for Frescati's original action to limit its liability, caps vessel owners' financial liability for maritime casualties when they are not at fault. OPA implemented caps on liability for oil spills, precisely the maritime casualty that

occurred in this case. In addition, Congress rejected strict liability in the Carriage of Goods by Sea Act ("COGSA"), 46 U.S.C. § 30701 note, which "facilitate[s] efficient contracting in contracts for carriage by sea," *Kirby*, 543 U.S. at 29, and governs bills of lading. COGSA expressly rejects the imposition of liability without fault upon shippers. Instead, it provides that a shipper "shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his agents, or his servants." 46 U.S.C. § 30701 note, Title I, Section 4(3). COGSA also generally limits a carrier's liability for cargo losses to $500 per package or customary freight unit. *Id.* at Title I, Section 4(5). Imposing uncapped liability for oil spills on charterers for risks that they cannot foresee or prevent is fundamentally inconsistent with the well-founded policy concerns that led Congress to adopt the provisions in OPA and COGSA that reject open-ended liability and liability without fault.

B. The Court Of Appeals' Reasons For Adopting The Warranty Interpretation Are Unsound.

The court of appeals' policy rationales for adopting the warranty interpretation are unsound, and ignore the onerous and unwarranted liability this interpretation imposes upon charterers. The court of appeals' principal rationale was that the charterer, as the party that selects the berth and port, is "normally" in a "better position" than the ship master "to appraise a port's more subtle dangers." Pet. App. 302a. The reasoning of the Fifth Circuit and commentators casts serious doubt upon the premise that the charterer "normally" has superior information about a berth and port. As the Fifth

Circuit explained, "the master on the scene, rather than a distant charterer, is in a better position to judge the safety of a particular berth." *Orduna*, 913 F.2d at 1156. This is because the master is "an expert in navigation," "knows the draft and trim of his vessel," and is "on the spot." *Id.* The charterer, in contrast, is "usually a merchant" who knows "nothing about navigation or the vessel" and "is ordinarily far from the scene." *Id.*; see also *id.* ("the charterer customarily chooses ports and berths based on commercial as opposed to nautical grounds"); Smith, *supra*, at 868 ("the charterer is usually a merchant with limited knowledge as to actual conditions and even less control over a port or berth").

More fundamentally, whether it was ever true that charterers "normally" had better access to information about berths and ports than distant vessel owners or crews, it is not true today. With modern information sources such as the internet, both charterers and vessel owners have equal access to pertinent and detailed information about berths and ports. Moreover, as vessel captains approach a berth, they use sophisticated navigation equipment and instantaneous communication methods to obtain real-time information about current conditions and traffic. They may also hire local river and docking pilots, as were utilized in this case. Local pilots are the persons with the most knowledge of and experience with the designated discharge location, constantly receive updates on changing conditions at the port and berth, and are present on the vessel to advise the captain. Vessel captains therefore have the most up-to-date information, and the last clear opportunity to avoid a problem because they control the vessel and make the final decision. For all of these reasons, the court of appeals' information

asymmetry rationale for imposing strict liability *on charterers* is outdated and no longer has any validity. Accordingly, safe berth clauses are best interpreted as provisions that grant charterers the right to select the berth, and impose a corresponding duty to pay the resulting expenses if a vessel exercises its right to reject the selected berth as unsafe.

The United States and Frescati suggested at the petition stage that CARCO was the least-cost avoider in this case because it owned and operated the berth at issue (near its own refinery). Frescati Opp. 24; U.S. Opp. 17. But CARCO's separate role as the wharfinger (in addition to being the charterer) gave rise to independent duties under maritime tort law. The rationale for those duties should not affect this Court's analysis of the proper default interpretation of the charter contract provision between CARCO and Star, which was entered into before the Paulsboro berth was selected. Pet. App. 310a. And even if CARCO's tort duties were relevant, the court of appeals vacated the negligence judgment against CARCO in its role as wharfinger because it had no special knowledge of the underwater anchor, which was unknown to everyone.

The United States' suggestion that CARCO was the least-cost avoider in this case is particularly self-serving because the casualty occurred in Federal Anchorage waters that the United States maintains, and for which CARCO bears no responsibility. As the court of appeals explained, the Army Corps of Engineers surveys and dredges the Anchorage to maintain its desired depth, and the Corps works with the Coast Guard and National Oceanic and Atmospheric Administration "to remove or mark obstructions when they are discovered." Pet. App. 6a; see also Pet. App. 223a-233a (describing the

responsibilities and activities of the federal agencies with respect to the Anchorage). CARCO, in contrast, had no responsibility under federal statutes or regulations to maintain the Anchorage or search for obstructions. To be sure, no federal agency is tasked with affirmatively searching the Anchorage for hazards. *Id.* at 6a. This prompted the district court to observe that there is a "void" in the federal scheme because nobody has a duty to search for obstructions in the Anchorage. *Id.* at 231a-232a. This "void," however, is entirely of the government's making. It persists to this day.

A further disadvantage of the strict liability approach is that it fills that "void" in a blunderbuss manner that precludes consideration of the facts and circumstances of individual cases. As a result, the court of appeals' approach inevitably results in liability on wholly "innocent[]" charterers. Cooke, *supra*, at ¶ 5A.10; see also Gilmore & Black, *supra*, § 4-4 at 204 (holding the charterer liable "regardless of fault" is "quite inconsonant with the positions of the parties" with respect to vessel safety); Smith, *supra*, at 868 (the absolute warranty approach places "an undeserved burden on the charterer" while the due diligence approach achieves "more equitable result[s]"); Hartman, *supra*, at 555 ("[u]nless the charterer is negligent in some manner, such as having particular knowledge concerning the unsafe status of a port that the shipowner does not have, there is no economic reason to place the risk of damage on the charterer").

This case starkly illustrates the harsh results for which the strict liability approach has been rightly criticized. CARCO had no knowledge of the abandoned anchor (in a federally maintained waterway) that caused the casualty. Pet. App. 334a

(finding no evidence that CARCO "knew or had reason to believe that the anchor was in the river"). Yet because the court of appeals imposed an absolute warranty where none was bargained for, CARCO faces liability for more than $140 million in damages, plus interest, even though it exercised due diligence. Nothing in the court of appeals' decisions persuasively explains why a mere contracting party (rather than the owner of the vessel that made the ultimate decision to enter the berth or the United States operating the Anchorage) should bear the massive risk from a hazard the charterer could not possibly have anticipated or avoided. Moreover, the court of appeals' ruling goes further than even the Second Circuit's approach, by extending the charterer's obligation beyond mere vessel damage to encompass environmental cleanup costs and damages not remotely addressed by the text of the provision. This is unprecedented. The due diligence standard avoids such manifestly unjust results. See Smith, *supra*, at 868 (due diligence approach avoids placing "an undeserved burden on the charterer").

Frescati and the United States asserted at the petition stage that there is nothing harsh about this result because CARCO bargained for it. Frescati Opp. 24-25; U.S. Opp. 17. Putting aside the fact that Frescati was not a party to the contract, that of course begs the question of what duties CARCO assumed in the charter contract, which is the question that this Court granted certiorari to decide. What is clear from the contract's language and context is that CARCO did not bargain for this kind of liability simply by accepting the duty to select a port and berth for its shipment.

C. The Warranty Interpretation Results In Inconsistent Standards Of Care For Wharfingers And Charterers.

An additional flaw of the warranty approach is that it is inconsistent with the maritime negligence principles that govern the duty of wharfingers to provide safe berths. See *Dutra Grp.*, slip op. at 17 (rejecting maritime rule that would "create bizarre disparities in the law"). As the court of appeals recognized in addressing Frescati's negligence claim, this Court established long ago that a wharfinger "does not guaranty the safety of vessels coming to his wharves," but instead is only "bound to exercise reasonable diligence in ascertaining the condition of the berths." *Smith*, 173 U.S. at 433; see Pet. App. 26a, 312a. Under that standard, the court of appeals reversed the negligence judgment against CARCO.

No sound rationale exists for this Court to hold that charterers face a different, and more onerous, standard of care when they select the berths for vessels that they hire. The underlying obligations of wharfingers and charterers to provide a safe berth are related and linked by the common purpose of protecting the welfare of vessels. The wharfinger owns and operates the berth and, therefore, has the direct obligation "to watch, maintain, and keep in order that which he asks the public to pay him for the use of." *M. & J. Tracy*, 283 F. at 102. The charterer, by contrast, does not own or control the berth, but instead selects it for particular vessels. The charterer therefore is only "bound to acquaint himself with the reputation and commonly known characteristics of what the wharfinger offers for hire." *Id.* Given that wharfingers and charterers perform complementary roles with respect to providing safe berths for vessels, there is no reason for charterers to

face a higher standard of liability. If anything, the wharfinger's knowledge of the conditions of the berth, exclusive control of the facility, and invitation to users suggest that, if a higher standard of care were to apply, it should logically fall on the wharfinger. See*, e.g.*, *Waldie* v. *Steers Sand & Gravel Corp.*, 151 F.2d 129, 130-31 (2d Cir. 1945) ("the reputation of a wharf" may excuse a charterer or tugboat for selecting a berth, "though it would not excuse a wharfinger" who "has not exercised care" in operating the berth).

The imposition of two drastically different standards of care is particularly irrational because the wharfinger and the charterer are often the same entity, as in this case. It is the height of arbitrariness for the same party in the same incident to face strict liability in its role as the charterer, but be subject to a due diligence standard in its role as the wharfinger. If the contract expressly imposed a bargained-for higher standard on the charterer, that would be one thing. But the default rule should be that the wharfinger and charterer have the same obligations and assume the same risks. Asymmetry produces anomalous results. This case is a clear example, where the court of appeals vacated the negligence judgment against CARCO as the wharfinger, but upheld its liability as the charterer. This incongruity does not exist under the due diligence approach adopted by the Fifth Circuit, which applies consistent standards of care to the charterer and the wharfinger.

Frescati argued at the petition stage that it is not anomalous to hold charterers to a higher standard because "a contractual duty is assumed voluntarily." Frescati Opp. 25. But this again begs the question of what duty a charterer assumes under a safe berth

clause. The fundamental question is what is the default rule when the language does not clearly reflect that one party voluntarily assumed a particular duty.

D. The Warranty Interpretation Produces An Inequitable Result In This Case.

Finally, in adopting maritime rules, this Court considers which approach "produces an equitable result" in the case at issue. *Kirby*, 543 U.S. at 35. Here, a decision rejecting the court of appeals' warranty interpretation produces an equitable result. The court of appeals' judgment, which shifts all liability to CARCO for an extraordinary accident that was not its fault, is grossly unfair and illustrates the inequities produced by the strict liability interpretation of the safe berth clause. To be sure, liability could not be aligned with fault in this case because the unnamed anchor-dropper was never found. But the court of appeals' reliance on the safe berth clause to impose massive liability on CARCO reveals the error of using that limited contract provision, rather than other sources of law, to allocate liability for catastrophic events.

Congress envisioned and provided for a much different outcome by enacting OPA. As noted, the OPA Trust Fund is a cost-spreading mechanism for oil spill cleanups that is financed by industry members, including CARCO. Indeed, Congress presciently addressed the scenario where an unknown third party is wholly culpable for a loss, providing that the responsible party can obtain full exoneration from financial liability, which leaves the Fund to absorb the entire cost and then recoup it by taxing the entire industry. 33 U.S.C. § 2703(a)(3). See *Gatlin Oil Co.* v. *United States*, 169 F.3d 207, 209-10 (4th Cir. 1999) (storage tank owner entitled to

recover from the Fund costs to clean up oil spill caused by unknown vandal). Frescati initially pursued that statutory remedy, but later withdrew its exoneration claim—an action that has never been explained. See Pet. App. 284a n.6. Instead, Frescati sued CARCO, and the government willingly joined in as Frescati's subrogee.

The resulting judgment, if allowed to stand, turns OPA on its head. Frescati, the "responsible party" that Congress determined should bear liability for the spill in the first instance, will pay nothing. The federal Trust Fund likewise will pay nothing, despite the fact that it is a cost-spreading mechanism for oil spills. Instead, CARCO—who was not a party in the post-spill U.S. Coast Guard investigation and cleanup and not subject to any liability for the casualty under OPA—will bear all of the costs, even though CARCO *already paid tens of millions of dollars into the OPA Fund*. Moreover, Congress created a mechanism for the Trust Fund to foot the bill when an absent third party is at fault. The court of appeals erred in relying on the safe berth clause to reach an incongruous result, which by itself demonstrates beyond question the unsoundness of interpreting the clause to impose strict liability on an unsuspecting party and thereby assigning liability for the entire costs of an oil spill.[10]

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[10] The inequity of the $55.5 million contract remedy in favor of Frescati is compounded by the fact that it was never a party to the voyage charter contract in the first place. It is particularly anomalous to impose this massive liability on CARCO based on a contract entered into between Star and CARCO, when the parties could not remotely have envisioned that CARCO would pay all of Frescati's costs of remediating an oil spill.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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July 9, 2019

ADDENDUM

ADDENDUM A

[LOGO]
Charles R. Weber Company, Inc.

Association of Ship Brokers
& Agents (U.S.A.), Inc.

October 1977

CODE WORD FOR THIS CHARTER PARTY: ASBATANKVOY

TANKER VOYAGE CHARTER PARTY

PREAMBLE

Greenwich, CT
Place

November 12, 2004
Date

IT IS THIS DAY AGREED between *HEIDENREICH MARINE INC. AS AGENTS FOR STAR TANKERS INC.* chartered owner/~~owner~~ (hereinafter called the "Owner") of the *Cyprus*

~~*SS*~~/*MS "ATHOS I"*
(hereinafter called the "Vessel")

and *CITGO ASPHALT REFINING COMPANY*
(hereinafter called the "Charterer")

that the transportation herein provided for will be performed subject to the terms and conditions of this Charter Party, which includes this Preamble and Part I and Part II. In the event of a conflict, the provisions of Part I will prevail over those contained in Part II.

PART I

A. Description and Position of Vessel:

Deadweight: *60,880 metric* tons (~~2240 lbs.~~)
Classed: *Lloyd's Register*

Loaded draft of Vessel on assigned summer freeboard *12.423 meters* ~~ft.~~ ~~in.~~ in salt water.

Capacity for cargo: *70,674 M3* tons (~~of 2240 lbs. each~~) *98%* more or less, Vessel's option.*Slops @ 98% 2,832 M3*
Coated: [ ]Yes [ ] No

Coiled: [X] Yes [ ] No
Last *three* ~~two~~ cargoes: *Fuel Oil / Crude / Crude*

Now: *Vessel Spot Caribbean Sea*
Expected Ready: *Guarano Pilot Station for Bajo Grande November 12, 2004 1600 hrs*

B. Laydays:

Commencing: *November 16, 2004*

Cancelling: *November 18, 2004*

C. Loading Port(s): *See Special Provisions # 1*

Charterer's Option

D. Discharging Port(s): *See Special Provisions # 2*

Charterer's Option

E. Cargo: *See Special Provisions # 3*

Charterer's Option

F. Freight Rate: *Worldscale 400 basis discharge United States Atlantic Coast, U.S. Gulf, plus 10 Worldscale points (minimum flat USD 2.50 PMT) basis discharge Caribbean Sea, plus 5 Worldscale points for high heat. Overage, if any at 50% of the fixing rate* per ton (~~of 2240 lbs each~~).

G. Freight Payable to: *See Special Provisions # 4* at

Total Laytime in Running Hours: *72*

I. Demurrage per day:/*pro rata: USD 42,000.00*

J. Commission of *1.25 %* is payable by Owner to *Charles R. Weber Company, Inc.* on the actual amount freight, *deadfreight and demurrage* when and as ~~freight is~~ paid.

K. The place of General Average and arbitration proceedings to be London/New York (strike out one).

L. ~~Tovalop: Owner warrants Vessel to be a member of TOVALOP scheme and will be so maintained throughout duration of this charter.~~

M. Special Provisions:

Nos. 1 - 19 and Citgo Clauses, as attached, with noted amendments/deletions to be deemed a part of this Charter Party.

IN WITNESS WHEREOF, the parties have caused this Charter, consisting of a Preamble, Parts I and II, to be executed in duplicate as of the day and year first above written.

Witness the signature of: *HEIDENREICH MARINE INC. AS AGENTS FOR STAR TANKERS INC.*

/s/ Helen Hastings By: */s/ James M. Healy*

Witness the Signature of: *CITGO ASPHALT REFINING COMPANY*

By:

This Charterparty is a computer generated copy of ASBATANKVOY form, printed under licence from the Association of Ship Brokers & Agents (U.S.A.), Inc., using software which is the copyright of Strategic Software Limited. It is a precise copy of the original document which can be modified, amended or added to

only by the striking out of original characters, or the insertion of new characters, such characters being clearly highlighted as having been made by the licensee or end user as appropriate and not by the author.

PART II

1. WARRANTY - VOYAGE - CARGO. The vessel, classed as specified in Part I hereof, and to be so maintained during the currency of this Charter, shall, with all convenient dispatch, proceed as ordered to Loading Port(s) named in accordance with Clause 4 hereof, or so near thereunto as she may safely get (always afloat), and being seaworthy, and having all pipes, pumps and heater coils in good working order, and being in every respect fitted for the voyage, so far as the foregoing conditions can be attained by the exercise of due diligence, perils of the sea and any other cause of whatsoever kind beyond the Owner's and/or Master's control excepted, shall load (always afloat), from the factors of the Charterer a full and complete cargo of petroleum and/or its products in bulk,not exceeding what she can reasonably stow and carry over and above her bunker fuel, consumable stores, boiler feed, culinary and drinking water, and complement and their effects (sufficient space to be left in the tanks to provide for the expansion of the cargo), and being so loaded shall forthwith proceed, as ordered on signing Bills of Lading, direct to the Discharging Port(s), or so near thereunto as she may safely get (always afloat), and deliver said cargo. If heating of the cargo is requested by the Charterer, the Owner shall exercise due diligence to maintain the temperatures requested.

2. FREIGHT. Freight shall be at the rate stipulated in Part I and shall be computed on intake quantity (except deadfreight as per Clause 3) as shown on the Inspector's Certificate of Inspection. Payment of freight shall be made by Charterer without discount upon delivery of cargo at destination, less any disbursements or advances made to the Master or Owner's agents at ports of loading and/or discharge and cost of insurance thereon. No deduction of freight shall be made for water and/or sediment contained in the cargo. The services of the Petroleum Inspector shall be arranged and paid for by the Charterer who shall furnish the Owner with a copy of the Inspector's Certificate.

3. DEADFREIGHT. Should the Charterer fail to supply a full cargo, the Vessel may, at the Master's option, and shall, upon request of the Charterer, proceed on her voyage, provided that the tanks in which cargo is loaded are sufficiently filled to put her in seaworthy condition. In that event, however, deadfreight shall be paid at the rate specified in Part I hereof on the difference between the intake quantity and the quantity the Vessel would have carried if loaded to her minimum permissible freeboard for the voyage.

4. NAMING LOADING AND DISCHARGE PORTS.

(a) The Charterer shall name the loading port or ports at least twenty-four (24) hours prior to the Vessel's readiness to sail from the last previous port of discharge, or from bunkering port for the voyage, or upon signing this Charter if the Vessel has already sailed. However, Charterer shall have the option of ordering the Vessel to the following destinations for wireless orders:

On a voyage to a port or ports in:

ST.KITTS	Carribean or U.S. Gulf loading port(s)
PORT SAID	Eastern Mediterranean or Persian Gulf loading port(s)
	(from ports west of Port Said.)

(b) If lawful and consistent with Part I and with the Bills of Lading, the Charterer shall have the option of nominating a discharging port or ports by radio to the Master on or before the Vessel's arrival at or off the following places:

Place	On a voyage to a port or ports in:
LAND'S END	United Kingdom/Continent (Bordeaux/Hamburg range) or Scandinavia (including Denmark)
SUEZ	Mediterranean (from Persian Gulf)
GIBRALTAR	Mediterranean (from Western Hemisphere).

(c) Any extra expense incurred in connection with any change in loading or discharging ports (so named) shall be paid for by the Charterer and any time thereby lost to the Vessel shall count as used Laytime.

5. LAYDAYS. Laytime shall not commence before the date stipulated in Part I, except with the Charterer's sanction. Should the Vessel not be ready to load by 4:00 o'clock P.M. (local time) on the cancelling date stipulated in Part I, the Charterer shall have the option of cancelling this Charter by giving Owner notice of such cancellation within twenty-four (24) hours after such cancellation date;

otherwise this Charter to remain in full force and effect.

6. NOTICE OF READINESS. Upon arrival at customary anchorage at each port of loading or discharge, the Master or his agent shall give the Charterer or his agent notice by letter, telegraph, wireless or telephone that the Vessel is ready to load or discharge cargo, berth or no berth, and laytime, as hereinafter provided, shall commence upon the expiration of six (6) hours after receipt of such notice, or upon the Vessel's arrival in berth (i.e., finished mooring when at a sealoading or discharging terminal and all fast when loading or discharging alongside a wharf), whichever first occurs. However, where delay is caused to Vessel getting into berth after giving notice or readiness for any reason over which Charterer has no control, such delay shall not count as used laytime.

7. HOURS FOR LOADING AND DISCHARGING. The number of running hours specified as laytime in Part I shall be permitted the Charterer as laytime for loading and discharging cargo but any delay due to the Vessel's condition or breakdown or inability of the Vessel's facilities to load or discharge cargo within the time allowed shall not count as used laytime. If regulations of the Owner or port authorities prohibit loading or discharging of the cargo at night, time so lost shall not count as used laytime; if the Charterer, shipper or consignee prohibits loading or discharging at night, time so lost shall count as used laytime. Time consumed by the vessel in moving from loading or discharge port anchorage to her loading or discharge berth, discharging ballast water or slops, will not count as used laytime.

8. DEMURRAGE. Charterer shall pay demurrage per running hour and pro rata for a part thereof at the

rate specified in Part I for all time that loading and discharging and used laytime as elsewhere herein provided exceeds the allowed laytime elsewhere herein specified. If, however, demurrage shall be incurred at ports of loading and/or discharge by reason of fire, explosion, storm or by a strike, lockout, stoppage or restraint of labor or by breakdown of machinery or equipment in or about the plant of the Charterer, supplier, shipper or consignee of the cargo, the rate of demurrage shall be reduced one-half of the amount stated in Part I per running hour or pro rata for part of an hour for demurrage so incurred. The Charterer shall not be liable for any demurrage for delay caused by strike, lockout, stoppage or restraint of labor for Master, officers and crew of the Vessel or tugboat or pilots.

9. SAFE BERTHING - SHIFTING. The vessel shall load and discharge at any safe place or wharf, or alongside vessels or lighters reachable on her arrival, which shall be designated and procured by the Charterer, provided the Vessel can proceed thereto, lie at, and depart therefrom always safely afloat, any lighterage being at the expense, risk and peril of the Charterer. The Charterer shall have the right of shifting the Vessel at ports of loading and/or discharge from one safe berth to another on payment of all towage and pilotage shifting to next berth, charges for running lines on arrival at and leaving that berth, additional agency charges and expense, customs overtime and fees, and any other extra port charges or port expenses incurred by reason of using more than one berth. Time consumed on account of shifting shall count as used laytime except as otherwise provided in Clause 15.

10. PUMPING IN AND OUT. The cargo shall be pumped into the Vessel at the expense, risk and peril of the Charterer, and shall be pumped out of the Vessel at the expense of the Vessel, but at the risk and peril of the Vessel only so far as the Vessel's permanent hose connections, where delivery of the cargo shall be taken by the Charterer or its consignee. If required by Charterer, Vessel after discharging is to clear shore pipe lines of cargo by pumping water through them and time consumed for this purpose shall apply against allowed laytime. The Vessel shall supply her pumps and the necessary power for discharging in all ports, as well as necessary hands. However, should the Vessel be prevented from supplying such power by reason of regulations prohibiting fires on board, the Charterer or consignee shall supply, at its expense, all power necessary for discharging as well as loading, but the Owner shall pay for power supplied to the Vessel for other purposes. If cargo is loaded from lighters, the Vessel shall furnish steam at Charterer's expense for pumping cargo into its Vessel, if requested by the Charterer, providing the Vessel has facilities for generating steam and is permitted to have fires on board. All overtime of officers and crew incurred in loading and/or discharging shall be for account of the Vessel.

11. HOSES: MOORING AT SEA TERMINALS. Hoses for loading and discharging shall be furnished by the Charterer and shall be connected and disconnected by the Charterer, or, at the option of the Owner, by the Owner at the Charterer's risk and expense. Laytime shall continue until the hoses have been disconnected. When Vessel loads or discharges at a sea terminal, the Vessel shall be properly equipped at Owner's expense for loading or discharging at such

place, including suitable ground tackle, mooring lines and equipment for handling submarine hoses.

12. DUES - TAXES - WHARFAGE. The Charterer shall pay all taxes, dues and other charges on the cargo, including but not limited to Customs overtime on the cargo, Venezuelan Habilitation Tax, C.I.M. Taxes at Le Havre and Portuguese Imposto de Comercio Maritime. The Charterer shall also pay all taxes on freight at loading or discharging ports and any unusual taxes, assessments and governmental charges which are not presently in effect but which may be imposed in the future on the Vessel or freight. The Owner shall pay all dues and other charges on the Vessel (whether or not such dues or charges are assessed on the basis of quantity of cargo), including but not limited to French droits de quai and Spanish derramas taxes. The Vessel shall be free of charges for the use of any wharf, dock, place or mooring facility arranged by the Charterer for the purpose of loading or discharging cargo; however, the Owner shall be responsible for charges for such berth when used solely for Vessel's purposes, such as awaiting Owner's orders, tank cleaning, repairs, etc. before, during or after loading or discharging.

13. (a). CARGOES EXCLUDED VAPOR PRESSURE. Cargo shall not be shipped which has a vapor pressure at one hundred degrees Fahrenheit (100 deg F.) in excess of thirteen and one-half pounds (13.5 lbs.) as determined by the current A.S.T.M. Method (Reid) D-323.

(b) FLASH POINT. Cargo having a flash point under one hundred and fifteen degrees Fahrenheit (115 deg F.) (closed cup) A.S.T.M. Method D-56 shall not be loaded from lighters but this clause shall not restrict the Charterer from loading or topping off

Crude Oil from vessels or barges inside or outside the bar at any port or place where bar conditions exist.

14. (a). ICE. In case port of loading or discharge should be inaccessible owing to ice, the Vessel shall direct her course according to Master's judgment, notifying by telegraph or radio, if available, the Charterers, shipper or consignee, who is bound to telegraph or radio orders for another port, which is free from ice and where there are facilities for the loading or reception of the cargo in bulk. The whole of the time occupied from the time the Vessel is diverted by reason of the ice until her arrival at an ice-free port of loading or discharge, as the case may be, shall be paid for by the Charterer at the demurrage rate stipulated in Part I.

(b) If on account of ice the Master considers it dangerous to enter or remain at any loading or discharging place for fear of the Vessel being frozen in or damaged, the Master shall communicate by telegraph or radio, if available, with the Charterer, shipper or consignee of the cargo, who shall telegraph or radio him in reply, giving orders to proceed to another port as per Clause 14 (a) where there is no danger of ice and where there are the necessary facilities for the loading or reception of the cargo in bulk, or to remain at the original port at their risk, and in either case Charterer to pay for the time that the Vessel may be delayed, at the demurrage rate stipulated in Part I.

15. TWO OR MORE PORTS COUNTING AS ONE. To the extent that the freight rate standard of reference specified in Part I F hereof provides for special groupings or combinations of ports or terminals, any two or more ports or terminals within each such grouping or combination shall count as one

port for purposes of calculating freight and demurrage only, subject to the following conditions:

(a) Charterer shall pay freight at the highest rate payable under Part I F hereof for a voyage between the loading and discharge ports used by Charterer.

(b) All charges normally incurred by reason of using more than one berth shall be for Charterer's account as provided in Clause 9 hereof.

(c) Time consumed shifting between the ports or terminals within the particular grouping or combination shall not count as used laytime.

(d) Time consumed shifting between berths within one of the ports or terminals of the particular grouping or combination shall count as used laytime.

16. GENERAL CARGO. The Charterer shall not be permitted to ship any packaged goods or non-liquid bulk cargo of any description; the cargo the Vessel is to load under this Charter is to consist only of liquid bulk cargo as specified in Clause I.

17. (a). QUARANTINE. Should the Charterer send the Vessel to any port or place where a quarantine exists, any delay thereby caused to the Vessel shall count as used laytime; but should the quarantine not be declared until the Vessel is on passage to such port, the Charterer shall not be liable for any resulting delay.

(b) FUMIGATION. If the Vessel, prior to or after entering upon this Charter, has docked or docks at any wharf which is not rat-free or stegomyia-free, she shall, before proceeding to a rat-free or stegomyia-free wharf, be fumigated by the Owner at his expense,

except that if the Charterer ordered the Vessel to an infected wharf the Charterer shall bear the expense of fumigation.

18. CLEANING. The Owner shall clean the tanks, pipes and pumps of the Vessel to the satisfaction of the Charterer's Inspector. The Vessel shall not be responsible for any admixture if more than one quality of oil is shipped, nor for leakage, contamination or deterioration in quality of the cargo unless the admixture, leakage, contamination or deterioration results from (a) unseaworthiness existing at the time of loading or at the inception of the voyage which was discoverable by the exercise of due diligence, or (b) error or fault of the servants of the Owner in the loading, care or discharge of the cargo.

19. GENERAL EXCEPTIONS CLAUSE. The Vessel, her Master and Owner shall not, unless otherwise in this Charter expressly provided, be responsible for any loss or damage, or delay or failure in performing hereunder, arising or resulting from:- any act, neglect, default or barratry of the Master, pilots, mariners or other servants of the Owner in the navigation or management of the Vessel; fire, unless caused by the personal design or neglect of the Owner; collision, stranding or peril, danger or accident of the sea or other navigable waters; saving or attempting to save life or property; wastage in weight or bulk, or any other loss or damage arising from inherent defect, quality or vice of the cargo; any act or omission of the Charterer or Owner, shipper or consignee of the cargo, their agents or representatives; insufficiency of packing; insufficiency or inadequacy or marks; explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, equipment or machinery; unseaworthiness of the Vessel unless caused by want of due

diligence on the part of the Owner to make the Vessel seaworthy or to have her properly manned, equipped and supplied; or from any other cause of whatsoever kind arising without the actual fault of privity of the Owner. And neither the Vessel nor Master or owner, nor the Charterer, shall, unless otherwise in this Charter expressly provided, be responsible for any loss of damage or delay or failure in performing hereunder, arising or resulting from:- Act of God; act of war; perils of the seas; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people; or seizure under legal process provided bond is promptly furnished to release the Vessel or cargo; strike or lockout or stoppage or restraint of labor from whatever cause, either partial or general; or riot or civil commotion.

20. ISSUANCE AND TERMS OF BILLS OF LADING.

(a) The Master shall, upon request, sign Bills of Lading in the form appearing below for all cargo shipped but without prejudice to the rights of the Owner and Charterter under the terms of this Charter. The Master shall not be required to sign Bills of Lading for any port which, the Vessel cannot enter, remain at and leave in safety and always afloat nor for any blockaded port.

(b) The carriage of cargo under this Charter Party and under all Bills of Lading issued for the cargo shall be subject to the statutory provisions and other terms set forth or specified in sub-paragraphs (i) through (vii) of this clause and such terms shall be incorporated verbatim or be deemed incorporated by the reference in any such Bill of Lading. In such sub-paragraphs and in any Act referred to therein, the

word "carrier" shall include the Owner and the Chartered Owner of the Vessel.

(i) CLAUSE PARAMOUNT. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Acts of the United States, approved April 16, 1936, except that if this Bill of Lading is issued at a place where any other Act, ordinance or legislation gives statutory effect to the International Convention for the Unification of Certain Rules relating to Bills of Lading at Brussels, August 1924, then this Bill of Lading shall have effect, subject to the provisions of such Act, ordinance or legislation. The applicable Act, ordinance or legislation (hereinafter called the "Act") shall be deemed to be incorporated herein and nothing herein contained shall be deemed a surrender by the Owner of any of its rights or immunities or an increase of any of its responsibilities or liabilities under the Act. If any term of this Bill of Lading be repugnant to the Act to any extent, such term shall be void to the extent but no further.

(ii) JASON CLAUSE. In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Owner is not responsible, by statute, contract or otherwise, the cargo shippers, consignees or owners of the cargo shall contribute with the Owner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. If a salving ship is owned or operated by the Owner, salvage shall be paid for as fully as if the said salving ship or ships belonged to

strangers. Such deposit as the Owner or his agents may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the cargo to the carrier before delivery.

(iii) GENERAL AVERAGE. General Average shall be adjusted, stated and sealed according to York/ Antwerp Rules l950 and, as to matters not provided for by those rules, according to the laws and usages at the port of New York or at the port of London, whichever place is specified in Part I of this Charter. If a General Average statement is required, it shall be prepared at such port or place in the United States or United Kingdom, whichever country is specified in Part I of this Charter, as may be selected by the Owner, unless otherwise mutually agreed, by an Adjuster appointed by the Owner and approved by the Charterer. Such Adjuster shall attend to the settlement and the collection of the General Average, subject to customary charges. General Average Agreements and/or security shall be furnished by Owner and/or Charterer, and/or Owner and/or Consignee of cargo, if requested. Any cash deposit being made as security to pay General Average and/or salvage shall be remitted to the Average Adjuster and shall be held by him at his risk in a special account in a duly authorized and licensed bank at the place where the General Average statement is prepared.

(iv) BOTH TO BLAME. If the Vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, maringer, pilot or the servants of the Owner in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder shall

indemnify the Owner against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said cargo, paid or payable by the other or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Owner. The foregoing provisions shall also apply where the owners, operators or those in charge of any ships or objects other than, or in addition to, the colliding ships or object are at fault in respect of a collision or contact.

(v) LIMITATION OF LIABILITY. Any provision of this Charter to the contrary notwithstanding, the Owner shall have the benefit of all limitations of, and exemptions from, liability accorded to the owner or chartered owner of vessels by any statute or rule of law for the time being in force.

(vi) WAR RISKS. (a) If any port of loading or of discharge named in this Charter Party or to which the Vessel may properly be ordered pursuant to the terms of the Bills of Lading be blockaded, or

(b) If owing to any war, hostilities, warlike operations, civil war, civil commotions, revolutions or the operation of international law (a) entry to any such port of loading or of discharge or the loading or discharge of cargo at any such port be considered by the Master or Owners in his or their discretion dangerous or prohibited or (b) it be considered by the Master or Owners in his or their discretion dangerous or impossible for the Vessel to reach any such port of loading or discharge - the Charterers shall have the right to order the cargo or such part of it as may be affected to be loaded or discharged at any other safe port of loading or of discharge within the range of loading or discharging ports respectively established

under the provisions of the Charter Party (provided such other port is not blockaded or that entry thereto or loading or discharge of cargo thereat is not in the Master's or Owner's discretion dangerous or prohibited). If in respect of a port of discharge no orders be received from the Charterers within 48 hours after they or their agents have received from the Owners a request for the nomination of a substitute port, the Owners shall then be at liberty to discharge the cargo at any safe port which they or the Master may in their or his discretion decide on (whether within the range of discharging ports established under the provisions of the Charter Party or not) and such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment so far as cargo so discharged is concerned. In the event of the cargo being loaded or discharged at any such other port within the respective range of loading or discharging ports established under the provisions of the Charter Party, the Charter Party shall be read in respect of freight and all other conditions whatsoever as if the voyage performed were that originally designated. In the event, however, that the Vessel discharges the cargo at a port outside the range of discharging ports established under the provisions of the Charter Party, freight shall be paid as for the voyage originally designated and all extra expenses involved in reaching the actual port of discharge and or discharging the cargo thereat shall be paid by the Charterers or Cargo Owners. In the latter event the Owners shall have a lien on the cargo for all such extra expenses.

(c) The Vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in any otherwise whatsoever

given by the government of the nations under whose flag the Vessel sails or any other government or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or authority or by any committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations, anything is done or is not done such shall not be deemed a deviation.

If by reason of or in compliance with any such direction or recommendation the Vessel does not proceed to the port or ports of discharge originally designated or to which she may have been ordered pursuant to the terms of the Bills of Lading, the Vessel may proceed to any safe port of discharge which the Master or Owners in his or their discretion may decide on and there discharge the cargo. Such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment and the Owners shall be entitled to freight as if discharge has been effected at the port or ports originally designated or to which the vessel may have been ordered pursuant to the terms of the Bills of Lading. All extra expenses involved in reaching and discharging the cargo at any such other port of discharge shall be paid by the Charterers and/or Cargo Owners and the Owners shall have a lien on the cargo for freight and all such expenses.

(vii) DEVIATION CLAUSE. The Vessel shall have liberty to call at any ports in any order, to sail with or without pilots, to tow or to be towed, to go to the assistance of vessels in distress, to deviate for the purpose of saving life or property or of landing any ill

or injured person on board, and to call for fuel at any port or ports in or out of the regular course of the voyage. Any salvage shall be for the sole benefit of the Owner.

21. LIEN. The Owner shall have an absolute lien on the cargo for all freight, deadfreight, demurrage and costs, including attorney fees, of recovering the same, which lien shall continue after delivery of the cargo into the possession of the Charterer, or of the holders of any Bills of Lading covering the same or of any storageman.

22. AGENTS. The Owner shall appoint Vessel's agents at all ports.

23. BREACH. Damages for breach of this Charter shall include all provable damages, and all costs of suit and attorney fees incurred in any action hereunder.

24. ARBITRATION. Any and all differences and disputes of whatsoever nature arising out of this Charter shall be put to arbitration in the City of New York or in the City of London whichever place is specified in Part I of this charter pursuant to the laws relating to arbitration there in force, before a board of three persons, consisting of one arbitrator to be appointed by the Owner, one by the Charterer, and one by the two so chosen. The decision of any two of the three on any point or points shall be final. Either party hereto may call for such arbitration by service upon any officer of the other, wherever he may be found, of a written notice specifying the name and address of the arbitrator chosen by the first moving party and a brief description of the disputes or differences which such party desires to put to arbitration. If the other party shall not, by notice served upon an officer of the first moving party within twenty days of the service of

such first notice, appoint its arbitrator to arbitrate the dispute or differences specified, then the first moving party shall have the right without further notice to appoint a second arbitrator, who shall be a disinterested person with precisely the same force and effect as if said second arbitrator has been appointed by the other party. In the event that the two arbitrators fail to appoint a third arbitrator within twenty days of the appointment of the second arbitrator, either arbitrator may apply to a Judge of any court of maritime jurisdiction in the city abovementioned for the appointment of a third arbitrator, and the appointment of such arbitrator by such Judge on such application shall have precisely the same force and effect as if such arbitrator had been appointed by the two arbitrators. Until such time as the arbitrators finally close the hearings either party shall have the right by written notice served on the arbitrators and on an officer of the other party to specify further disputes or differences under this Charter for hearing and determination. Awards made in pursuance to this clause may include costs, including a reasonable allowance for attorney's fees, and judgement may be entered upon any award made hereunder in any Court having jurisdiction in the premises.

25. SUBLET. Charterer shall have the right to sublet the Vessel. However, Charterer shall always remain responsible for the fulfillment of this Charter in all its terms and conditions.

26. OIL POLLUTION CLAUSE. Owner agrees to participate in Charterer's program covering oil pollution avoidance. Such program prohibits discharge overboard of all oily water, oily ballast or oil in any form of a persistent nature, except under extreme

circumstances whereby the safety of the vessel, cargo or life at sea would be imperiled.

Upon notice being given to the Owner that Oil Pollution Avoidance controls are required, the Owner will instruct the Master to retain on board the vessel all oily residues from consolidated tank washings, dirty ballast, etc., in one compartment, after separation of all possible water has taken place. All water separated to be discharged overboard.

If the Charterer requires that demulsifiers shall be used for the separation of oil/water, such demulsifiers shall be obtained by the Owner and paid for by Charterer.

The oil residues will be pumped ashore at the loading or discharging terminal, either as segregated oil, dirty ballast or co-mingled with cargo as it is possible for Charterers to arrange. If it is necessary to retain the residue on board co-mingled with or segregated from the cargo to be loaded, Charterers shall pay for any deadfreight so incurred.

The Charterer agrees to pay freight as per the terms of the Charter Party on any consolidated tank washings, dirty ballast, etc., retained on board under Charterer's instructions during the loaded portion of the voyage up to a maximum of 1% of the total deadweight of the vessel that could be legally carried for such voyage. Any extra expenses incurred by the vessel at loading or discharging port in pumping ashore oil residues shall be for Charterer's account, and extra time, if any, consumed for this operation shall count as used laytime.

BILL OF LADING

Shipped in apparent good order and condition by_____

on board the_____

Steamship/Motorship_____

whereof_____

is Master, at the port of_____

to be delivered at the port of_____

or so near thereto as the Vessel can safely get, always afloat, unto_____

or order on payment of freight at the rate of_____

This shipment is carried under and pursuant to the terms of the contract/charter dated New York/London

_____

between_____and_____, as Charterer, and all the terms whatsoever of the said contract/charter except the rate and payment of freight specified therein apply to and govern the rights of the parties concerned in this shipment.

In witness whereof the Master has signed_____ Bills of Lading of this tenor and date, one of which being accomplished, the others will be void.

Dated at_____this_____day of_____

_____Master

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SPECIAL PROVISIONS NOS. 1 - 19
to M/T "ATHOS I" CHARTER PARTY
DATED November 12, 2004

1. LOADING PORT(S): One (1) or two (2) safe port(s) Caribbean Sea excluding Cuba, Orinoco River, Haiti and Caripito.

2. DISCHARGE PORT(S): One (1) or two (2) safe port(s) United States Atlantic Coast if New York not North of George Washington Bridge excluding Florida or Charterer's option one (1) or two (2) safe port(s) U.S. Gulf excluding Florida or Charterer's option one (1) or two (2) safe port(s) Caribbean Sea excluding Cuba, Orinoco River, Haiti and Caripito / Martinique.

3. CARGO DESCRIPTION: Part cargo minimum 50,000 metric tons Charterer's option up to full cargo, with no deadfreight for Charterer's account provided minimum quantity supplied. Crude and/or Dirty Petroleum Products, excluding Low Sulphur Waxy Residue and Carbon Black Feedstock but including Vacuum Gas Oil. Maximum two (2) grades within Vessel's natural segregation.

HEATING: Charterer's option see Citgo Clauses Number 31 and 37. Vessel maximum loaded temperature 165 degrees Fahrenheit.

ATHOS I warranted lift 47,000 metric tons basis 36 feet fresh water sailing draft at load port.

Owners confirm Vessel(s) able to maintain maximum 50 feet waterline to manifold during discharge at Savannah, Georgia.

Owners confirm Vessel(s) complies with maximum air draft of 180 feet.

4. FREIGHT PAYABLE: In U.S. Dollars via telegraphic transfer: Citibank, N.A., New York, New York ABA No. 021000089, account number 30426088, favor: Star Tankers Inc.

5. Any delays and/or costs, not normally incurred, due to U.S.C.G. or other U.S. Government Inspections, to be shared equally between Owners and Charterers.

6. At New York, if escort tugs required, then such cost to be for Charterers' account.

7. Notwithstanding any other clause in this charter party to the contrary, a nomination of or request or order to change port(s) in the U.S. must be given to Owner verbally and confirmed in writing latest 96 hours prior to estimated arrival in order to be valid. Any delay expense or other consequence of failing to give such timely request/order shall be for Charterer's account.

8. TAXES: Any taxes and or dues on cargo and/or freight for Charterers account.

9. WORLDSCALE: Worldscale hours, terms and conditions to apply.

10. EXXON EARLY LOADING CLAUSE: In the event charterer agrees to load vessel prior to commencement of laydays all such time to be credited against any time vessel is on demurrage. For purposes of this clause, time to count when vessel is all fast at the load port.

11. CITGO COMPLIANCE WITH U.S. CUSTOMS AND BORDER PROTECTION MANIFEST REGULATIONS CLAUSE: The Vessel Owner shall comply with all applicable U.S. Customs and Border Protection ("CBP") regulations, including, but not limited to, 19 CFR §4.7 pertaining to electronically filing the manifest for the cargo with CBP at least 24 hours prior to arrival at a U.S. Port, to having a current International Carriers Bond, and to having a Standard Carrier Alpha Code ("SCAC") unique number.

12. HEIDMAR U.S. CUSTOMS CLAUSE: U.S. Customs clearance for cargo discharging in, or transiting a U.S. Port or territory subject to control by the bureau of U.S. Customs and Border Patrol (CBP, Charterer's warrant that all necessary details required by CBP for clearance of the cargo, inclusive of but not limited to, shipper, consignee and notify party full name, address and phone number or telex number, will be included on each Bill of Lading or alternatively supplied to Owner in writing a minimum of 36 hours prior to Vessel's arrival at the first designated U.S. Port of discharge. For voyages of less than 24 hours in duration this information must be supplied prior to departure from the load place or port. Any delays, fines or penalties incurred due to Charterer's failure to comply with the above will be for Charterer's account.

13. Any delays incurred entering or departing ports in Lake Maracaibo caused by awaiting tugs, pilots and unlit buoys shall count as laytime or time on demurrage if the vessel is already on demurrage.

14. VITOL ISPS (REV 06/08/04): ISPS CLAUSE FOR VOYAGE CHARTER PARTIES (A)(i) It is a condition of this charter party that, from the date of coming into force of the International Code for the

Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) in relation to the Vessel, both the Vessel and "the Company" (as defined by the ISPS Code) shall comply with the requirements of the ISPS Code relating to the Vessel and "the Company". Upon request the Owners shall provide a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) to the Charterers. The original of the ISSC, or interim ISSC, and the original of the Continuous Synopsis Record (mandatory after 1st July 2004) must be on board the vessel at all times. The Owners shall provide the Charterers with the full style contact details of the Company Security Officer (CSO).

(ii) Except as otherwise provided in this Charter Party, loss, damage, expense or delay (which shall not count as laytime or, if the vessel is on demurrage, as time on demurrage)," "excluding consequential loss, caused by failure on the part of the Owners or "the Company" or the Vessel and/or its crew to comply with the requirements of the ISPS Code or this Clause shall be for the Owners' account.

(B) (i) Upon the specific request of Owner, the Charterers shall provide the CSO and the Ship Security Officer (SSO)/Master with their full style contact details and any other available information the Owners reasonably require to comply with the ISPS Code.

(ii) Except as otherwise provided in this Charter Party, loss, damage, expense, excluding consequential loss, caused by failure on the part of the Charterers to comply with this Clause shall be for the Charterers' account and any delay caused by such failure shall

count as laytime or, if the vessel is on demurrage, as time on demurrage.

(B) Provided that the delay is not caused by the Owners' failure to comply with their obligations under the ISPS Code, and that the measure imposed by the port facility or by relevant authorities applies to all vessels in that port and not specifically to Owners vessel, the following shall apply:

(i) Notwithstanding anything to the contrary provided in this Charter Party, the Vessel shall be entitled to tender Notice of Readiness even if not cleared due to applicable security regulations or measures imposed by a port facility or any relevant authority under the ISPS Code.

(ii) Any delay resulting from measures imposed by a port facility or by any relevant authority under the ISPS Code shall count as half laytime or half time on demurrage if the Vessel is on demurrage. If the delay occurs before laytime has started or after laytime or time on demurrage has ceased to count as provided for elsewhere within this charter party, it shall nevertheless count as half laytime or, if the vessel is on demurrage, as half time on demurrage, and always in accordance with A(ii) and except for any reason directly attributable to the status/circumstances of the Owners and/or Master and/or Crew and/or Vessel.

(iii) Notwithstanding anything to the contrary provided in this Charter Party, any additional costs or expenses whatsoever solely arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code including, but not limited to, security guards, launch services, tug escorts, port security fees or taxes and inspections, unless such costs or expenses

result solely from the Owners' negligence shall be shared equally between owner and Charterer.

(D) All measures required by the Owners to comply with the Ship Security Plan shall be for the Owners' account.

(E) If either party makes any payment, which is for the other party's account according to this Clause, the other party shall reimburse the paying party all such reasonable and proven expenses.

15. OWNER'S FULL ADDRESS: Heidenreich Marine, Inc. As Agents For Star Tankers Inc., 320 Post Road, Darien, Ct 06820.

16. APPROVALS: To the best of Owner's knowledge the Vessel is approved by the following: ConocoPhillips, El Paso, Star Tankers, USCG and C.O.C.

17. QUALIFIED INDIVIDUALS: O'Brien's Oil Pollution Services

18. OIL SPILL: Marine Spill Response Corp.

19. USCG COC EXPIRE: October 13, 2005

CITGO PETROLEUM CORPORATION
(Or Nominee)CLAUSES
REVISED May 27, 1999

Charter Party Form: ASBATANKVOY

1. ITOPF (NEW 2/97)

OWNERS WARRANT THAT VESSEL IS ENTERED WITH THE INTERNATIONAL TANKER OWNERS POLLUTION FEDERATION (ITOPF) AT THE COMMENCEMENT OF THIS CHARTER AND WILL SO REMAIN DURING ITS TERM.

2. YORK/ANTWERP (REVISED 2/97)

YORK/ANTWERP RULES, 1974, AS AMENDED 1994, SHALL APPLY FOR ADJUSTMENT OF GENERAL AVERAGE.

3. U. S. COAST GUARD COMPLIANCE (REVISED 4/96)

OWNER WARRANTS THAT DURING THE TERM OF THIS CHARTER PARTY THE VESSEL WILL BE IN FULL COMPLIANCE WITH ALL APPLICABLE U.S. COAST GUARD REGULATIONS INCLUDING POLLUTION PREVENTION REGULATIONS AS SPECIFICALLY DESCRIBED AS 33 CFR PARTS 150, 151, 154, 156, 157 AND 164 OR WILL HOLD NECESSARY WAIVERS IF NOT IN COMPLIANCE. ANY DELAY AS A RESULT OF NON-COMPLIANCE SHALL NOT COUNT AS USED LAYTIME OR DEMURRAGE, IF ON DEMURRAGE.

FURTHER, OWNER AND THE VESSEL SHALL COMPLY WITH ALL APPLICABLE STATE AND LOCAL LAWS, REGULATIONS, AND ORDINANCE PERTAINING TO MARINE TRANSFER OPERATIONS AND THE MOORING AND BOOMING OF VESSELS.

4. FINANCIAL RESPONSIBILITY (REVISED 2/97)

OWNER WARRANTS TO HAVE SECURED AND CARRY ABOARD THE VESSEL A U.S. COAST GUARD CERTIFICATE OF FINANCIAL RESPONSIBILITY AS REQUIRED BY THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1321), AS AMENDED BY THE CLEAN WATER ACT OF 1977 AND AS MAY BE AMENDED IN THE FUTURE.

IN NO CASE SHALL CHARTERERS BE LIABLE FOR DEMURRAGE AS A RESULT OF OWNERS FAILURE TO OBTAIN THE AFOREMENTIONED CERTIFICATE.

5. PUMPING **(AMENDED)**

OWNER WARRANTS THAT VESSEL WILL DISCHARGE THE ENTIRE CARGO WITHIN **33** HOURS OR MAINTAIN 100 PSI AT THE VESSELS MANIFOLD **EXCEPT WHEN PERFORMING STRIPPING MAXIMUM THREE (3) HOURS** PROVIDING SHORE FACILITIES CAN ACCEPT. ANY DELAYS DUE TO VESSELS INABILITY TO DISCHARGE WITHIN **33** HOURS OR MAINTAIN 100 PSI AT THE VESSELS MANIFOLD WILL BE FOR OWNERS ACCOUNT AND WILL NOT COUNT AS LAYTIME OR DEMURRAGE. OWNER WILL PROVIDE A COPY OF NOTE OF PROTEST, VESSELS PUMPING RECORD SIGNED BY A TERMINAL REPRESENTATIVE WITH THE DEMURRAGE CLAIM. **TIME SAVED IN PUMPING CANNOT BE ADDED TO THE STRIPPING ALLOWANCE.**

6. BUNKER INSPECTION

OWNER TO ALLOW CHARTERERS INDEPENDENT INSPECTORS TO SURVEY BUNKERS ON VESSELS LOADING AND DISCHARGING.

7. CARGO RETENTION

IN THE EVENT THAT ANY CARGO REMAINS ON BOARD UPON COMPLETION OF DISCHARGE, CHARTERER SHALL HAVE THE RIGHT TO DEDUCT FROM FREIGHT AN AMOUNT EQUAL TO THE FOB PORT OF LOADING VALUE OF SUCH CARGO PLUS FREIGHT DUE WITH RESPECT THERETO, PROVIDED THAT THE VOLUME OF CARGO REMAINING ON BOARD IS PUMPABLE BY VESSELS STRIPPING SYSTEM AS DETERMINED BY AN INDEPENDENT SURVEYOR. ANY ACTION OR LACK OF ACTION IN ACCORDANCE WITH THE PROVISION SHALL BE WITHOUT PREJUDICE TO ANY RIGHTS OR OBLIGATIONS OF THE PARTIES.

OWNER AGREES TO SHARE EQUALLY WITH CHARTERER ALL EXPENSES INCURRED WITH REGARD TO USING AN INDEPENDENT SURVEYOR.

8. INERT GAS SYSTEM **(AMENDED)**

OWNER WARRANTS THAT VESSEL HAS A WORKING INERT GAS SYSTEM AND OFFICERS AND CREW ARE EXPERIENCED IN THE OPERATION OF THE SYSTEM. OWNERS AGREE TO DEPRESSURIZE THE TANKS OF INERT GAS EQUIPPED VESSEL FOR ULLAGE MEASUREMENTS BY DESIGNATED INSPECTORS. **TIME FOR DE/RE-INERTING SHALL BE FOR CHARTERER'S ACCOUNT.**

9. CRUDE OIL WASHING (REVISED 4/96)

IF REQUESTED IN CHARTERER'S VOYAGE INSTRUCTIONS, OWNER AGREES TO CONDUCT CRUDE OIL WASHING OF CARGO TANKS AT

DISCHARGE PORT(S) SIMULTANEOUSLY WITH CARGO DISCHARGE OPERATIONS. COW OPERATIONS WILL BE PERFORMED IN ACCORDANCE WITH THE PROCEDURES OF ICS/OCIMF "GUIDELINES FOR TANKWASHING WITH CRUDE OIL" IN, THE ABSENCE OF EXPRESS CONTRARY INSTRUCTIONS OF THE CHARTERER. ANY ADDITIONAL TIME CONSUMED AS A RESULT OF CRUDE OIL WASHING UP TO A MAXIMUM OF EIGHT (8) HOURS OR PRORATA ON THE BASIS OF THE NUMBER OF TANKS CLEANED TO THE NUMBER OF TANKS LOADED SHALL CONSTITUTE USED LAYTIME. OWNER AGREES TO COMPLY WITH APPLICABLE PORT AND TERMINAL REGULATIONS AND IF NECESSARY TO SUBMIT ANY ADVANCE INFORMATION OR TECHNICAL DATA THAT MAY BE REQUIRED BY LOCAL AUTHORITIES RELATIVE TO C.O.W. OPERATIONS. OWNER WILL INSTRUCT DISPORT AGENTS TO RECORD COW DATE/TIMES ON STATEMENT OF FACTS.

IN CHARTERER REQUESTS C.O.W., THE VESSEL FAILS TO C.O.W. ANY MEASURABLE CARGO RETAINED ON BOARD SHALL BE DEEMED LIQUID AND PUMPABLE, AND CHARTERER SHALL HAVE THE RIGHT TO DEDUCT FROM FREIGHT AN AMOUNT EQUAL TO THE FOB PORT OF LOADING VALUE OF SUCH CARGO PLUS FREIGHT DUE WITH RESPECT THERETO.

10. SHIP-TO-SHIP TRANSFER CLAUSE **(AMENDED)**

CHARTERERS SHALL HAVE THE OPTION TO LOAD OR DISCHARGE THE VESSEL VIA SHIP-TO-SHIP TRANSFER, (WEATHER PERMITTING AND SUBJECT TO MASTERS APPROVAL WHICH IS

NOT TO BE UNREASONABLY WITHHELD), AT ANCHOR, UNDERWAY OR ADRIFT. CHARTERER WILL PROVIDE ADEQUATE FENDERS, HOSES AND EQUIPMENT NECESSARY TO PERFORM THE LIGHTERING OPERATION. OWNER AGREE TO ALLOW CHARTERER'S SUPERVISORY PERSONNEL ON BOARD, INCLUDING MOORING MASTER, TO ASSIST IN THE PERFORMANCE OF THE LIGHTERING OPERATION.

ALL TIME CONSUMED FROM VESSEL'S ARRIVAL AT THE TRANSFER LOCATION UNTIL CARGO HOSES ARE DISCONNECTED SHALL COUNT AS USED LAYTIME AS CALCULATED IN PART II EXCEPT THOSE DELAYS CAUSED BY WEATHER CONDITIONS WHICH SHALL COUNT AS **FULL** LAYTIME OR IF ON DEMURRAGE AS **FULL** DEMURRAGE. THE LIGHTERING LOCATION SHALL NOT COUNT AS ADDITIONAL DISCHARGE PORT OR DISCHARGE BERTH WHEN COMPUTING FREIGHT BASED ON PUBLISHED WORLDSCALE RATES.

11. IN-TRANSIT LOSS CLAUSE **(AMENDED)**

OWNER SHALL BE LIABLE FOR IN-TRANSIT LOSS OF CARGO ABOVE **.30**% AND CHARTERER SHALL HAVE THE RIGHT TO DEDUCT FROM FREIGHT AN AMOUNT EQUAL TO THE FOB PORT OF LOADING VALUE OF SUCH LOST CARGO PLUS FREIGHT DUE WITH RESPECT THERETO. IN-TRANSIT LOSS IS DEFINED AS THE DIFFERENCE BETWEEN THE A.P.I. TOTAL CALCULATED SHIP VOLUMES AFTER LOADING AT THE LOADING PORT(S) AND BEFORE UNLOADING AT THE DISCHARGING PORT(S). CARGO QUANTITIES WILL BE DETERMINED BY INDEPENDENT INSPECTORS ACCOMPANIED BY

SHIP PERSONNEL AND QUANTITIES SO DETERMINED SHALL BE FINAL. OWNER SHALL HAVE THE BURDEN OF PROVING, BY PREPONDERANCE OF EVIDENCE, ANY OTHERWISE AVAILABLE DEFENSE RESPECTING A LOSS ABOVE **.30**%. LIQUID PUMPABLE CARGO REMAINING ON BOARD AFTER COMPLETION OF DISCHARGE SHALL NOT BE DEFINED AS AN IN-TRANSIT LOSS. ANY ACTION OR LACK OF ACTION IN ACCORDANCE WITH THIS PROVISION SHALL BE WITHOUT PREJUDICE TO ANY RIGHTS OR OBLIGATIONS OF THE PARTIES.

12. JURISDICTION CLAUSE

THE ARBITRATION CLAUSE OF THIS CHARTER PARTY NOTWITHSTANDING, DISPUTES CONCERNING NON-DELIVERY OR DAMAGE TO CARGO MAY, AT CHARTERER'S OPTION, BE SUBMITTED FOR ADJUDICATION TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND BOTH PARTIES HEREBY SUBMIT TO THE JURISDICTION OF THAT COURT FOR SUCH PURPOSES.

13. CITGO BILL OF LADING AND INDEMNITY CLAUSE**(DELETED) REPLACED WITH THE FOLLOWING: CHEVRON BILL OF LADING INDEMNITY (10-31-02) ALWAYS U.S. LAW TO APPLY**

THE DISCHARGE PORT(S) SHOWN IN THE ORIGINAL BILL OF LADING SHALL NOT CONSTITUTE A DECLARATION OF DISCHARGE PORT(S) AND CHARTERER SHALL HAVE THE RIGHT TO ORDER VESSEL TO ANY PORT(S) WITHIN THE TERMS OF THIS CHARTER PARTY. CHARTERER HEREBY INDEMNIFIES OWNER AGAINST CLAIMS

BROUGHT BY HOLDERS OF ORIGINAL BILLS OF LADING AGAINST OWNER BY REASON OF CHANGE OF DESTINATION ORDERED BY THE CHARTERER.

IN THE EVENT THAT THE ORIGINAL BILLS OF LADING ARE NOT AVAILABLE AT THE ACTUAL DISCHARGE PORT ON VESSEL'S ARRIVAL, OWNER AGREES TO DISCHARGE CARGO AT FACILITY(IES)/PORT(S) TO RECEIVER(S) DESIGNATED BY CHARTERER IN THE VOYAGE ORDERS WITHOUT PRESENTATION OF ORIGINAL BILLS OF LADING UPON RECEIPT OF CHARTERER'S INVOCATION OF OWNER'S APPROVED P&I CLUB RECOMMENDED "LETTER OF INDEMNITY" WORDING. OWNER'S APPROVED P&I CLUB IS STANDARD STEAMSHIP OWNERS P AND I ASSOCIATION (BERMUDA) LTD.. OWNER AND CHARTERER AGREE THAT ANY REQUIREMENT CONTAINED IN THE ABOVE REFERENCED "LETTER OF INDEMNITY" WORDING FOR A BANK GUARANTEE IS HEREBY WAIVED.

APPROVED P&I CLUBS:

- STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION (BERMUDA) LTD.
- UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE ASSOCIATION (BERMUDA) LTD.
- WEST OF ENGLAND SHIP OWNERS MUTUAL INSURANCE ASSOCIATION (LUXEMBOURG)
- JAPAN SHIP OWNERS' MUTUAL PROTECTION & INDEMNITY ASSOCIATION
- ASSURANCEFORENINGEN GARD
- ASSURANCEFORENINGEN SKULD

- THE SWEDISH CLUB (SVERIGES ANG-FARTYGS ASSURANS FORENING)
- BRITANNIA STEAMSHIP INSURANCE ASSOCIATION LTD.
- LONDON STEAMSHIP OWNER'S MUTUAL INSURANCE ASSOCIATION LTD.
- SHIPOWNERS' MUTUAL INSURANCE (SEAMEN'S BENEFITS) ASSOCIATION
- STANDARD STEAMSHIP OWNERS' MUTUAL WAR RISKS ASSOCIATION LTD.
- AMERICAN STEAMSHIP OWNERS MUTUAL P&I ASSOCIATION
- NORTH OF ENGLAND P&I ASSOCIATION LIMITED

14. LIGHTERING (REVISED 5/27/99) **(AMENDED)**

IF LIGHTERING IS REQUIRED AT A CUSTOMARY LIGHTERING ANCHORAGE FOR DESIGNATED PORT, TIME USED IN LIGHTERING SHALL COUNT AS LAYTIME AND COMMENCE SIX (6) HOURS AFTER **ARRIVING AT THE LIGHTERING POSITION** OR WHENEVER THE FIRST LIGHTERING CRAFT IS ALONGSIDE, WHICHEVER OCCURS FIRST. LAYTIME SHALL END WHEN HOSES ARE OFF FOLLOWING THE LIGHTERING OPERATION. **UNLESS OTHERWISE STIPULATED BY WORLDSCALE** SUCH ANCHORAGE SHALL NOT BE CONSIDERED AS A SECOND DISCHARGE PORT OR SECOND DISCHARGE BERTH, IN THE COMPUTATION OF FREIGHT RATE FROM PUBLISHED WORLDSCALE 100 RATES, WITH FREIGHT PAYMENT BASED ON THE ENTIRE CARGO QUANTITY

LOADED FROM ACTUAL LOAD PORT(S) TO ACTUAL FINAL DISPORT(S). RUNNING TIME FROM SUCH ANCHORAGE TO BERTH SHALL NOT COUNT AS LAYTIME OR DEMURRAGE, IF LAYTIME HAS EXPIRED. **ALL COSTS IN CONNECTION WITH SUCH LIGHTERAGE OPERATION TO BE FOR CHARTERER'S ACCOUNT.**

USCG REGULATIONS, COVERING LIGHTERING OPERATIONS, REQUIRE THE OWNER OR OPERATOR OF A VESSEL TO ENSURE THE AVAILABILITY OF, THROUGH CONTRACT OR OTHER APPROVED MEANS, RESPONSE RESOURCES THAT WILL RESPOND TO AN AVERAGE MOST PROBABLE DISCHARGE (AMPD) CITGO PETROLEUM CORPORATION, AS CHARTERER AND/OR RECEIVER OF THE CARGO, AT ITS EXPENSE, WILL PROVIDE SUCH AMPD COVERAGE FOR THE VESSEL TO COMPLY WITH THESE REGULATIONS. SHOULD A SPILL OCCUR, THE VESSEL SHALL HAVE THE RIGHT TO CALL OUT THE AMPD RESPONSE RESOURCES AS PROVIDED THIS COVERAGE, CITGO PETROLEUM CORPORATION. BY PROVIDING THIS COVERAGE, CITGO PETROLEUM CORPORATION IS NOT AND SHALL NOT BE LIABLE OF THE COSTS OF THE SPILL RESPONSE AND DEMURRAGE ARISING THEREFROM.

15. LAYTIME (REVISED 5/98) **(AMENDED)**

AT THE END OF NO.7 PART II, "HOURS FOR LOADING AND DISCHARGING" ADD TIME CONSUMED AWAITING PRATIQUE, CUSTOMS, IMMIGRATION, DAYLIGHT, TIDE, OPENING OF LOCKS, RAISINGOF BRIDGES, PILOT AND/OR TUGS SHALL COUNT AS **ONE HALF** LAYTIME

OR DEMURRAGE, IF LAYTIME HAS EXPIRED **OR ONE HALF DEMURRAGE IF VESSEL ON DEMURRAGE**.

IF FOR ANY REASON LAYTIME HAS EXPIRED, CHARTERER TO BE ALLOWED THE BENEFITS OF CLAUSE 6, 7, AND 8, PART II AT EACH PORT OF LOADING OR DISCHARGE BEFORE DEMURRAGE SHALL BE INCURRED WHETHER PREVIOUSLY ON DEMURRAGE OR NOT.

16. WEATHER **(AMENDED)**

DELAYS DUE TO WEATHER CONDITIONS AND THEIR EFFECT ON THE SEA AT LOAD OR DISCHARGE PORTS IN BERTHING, LOADING, DISCHARGING SHALL COUNT AS ONE HALF LAYTIME OR IF ON DEMURRAGE ONE HALF TIME ON DEMURRAGE.

17. AGENCY CLAUSE

OWNER AGREE TO APPOINT AGENTS AS NOMINATED BY CHARTERERS AT LOAD AND DISCHARGE PORTS. SUCH AGENTS SHALL BE OWNER'S AGENT FOR ALL PURPOSES UNDER THIS CHARTER.

18. BOARDING CLAUSE

OWNER AGREES TO ALLOW CHARTERER'S REPRESENTATIVE(S) TO BOARD VESSEL AT LOAD AND/OR DISCHARGE PORTS TO OBSERVE CARGO LOADING/DISCHARGING OPERATION.

19. CITGO SHORE RELEASE (REVISED 5/98)

TIME SPENT WAITING VESSEL RELEASE BY SHORE AUTHORITIES AND/OR CARGO INSPECTORS AFTER DISCONNECTION OF HOSES IN EXCESS OF THREE HOURS SHALL COUNT AS

USED LAYTIME OR DEMURRAGE IF VESSEL IS ON DEMURRAGE. FOR PURPOSES OF THIS CLAUSE, VESSEL RELEASE AT LOAD PORT SHALL BE EFFECTED BY THE CARGO DOCUMENTS BEING PLACED ON BOARD.

20. LAYDAYS-NOTICE OF READINESS (REVISED 4/96)

AT THE END OF NO. 6, PART II "NOTICE OF READINESS" ADD CHARTERER IS NOT OBLIGATED TO ACCEPT NOTICE OF READINESS PRIOR TO COMMENCEMENT OF LAYDAYS AS PROVIDED FOR IN PART I ARTICLE B.

IN THE EVENT THAT NOTICE OF READINESS IS GIVEN PRIOR TO COMMENCEMENT OF LAYDAYS AS PROVIDED FOR IN PART I ARTICLE B, LAYTIME SHALL NOT BEGIN UNTIL 0600 LOCAL TIME ON THE FIRST DAY OF LAYDAYS OR UPON VESSEL'S ARRIVAL IN BERTH WHICHEVER OCCURS FIRST.

21. HOSES

OWNER AGREES TO CONNECT AND DISCONNECT HOSES IF SO REQUESTED BY CHARTERERS AT OWNER'S RISK AND EXPENSE.

22. CITGO DIVERSION CLAUSE

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS CHARTER PARTY AND NOTWITHSTANDING NOMINATION OF LOADING AND/OR DISCHARGE PORTS AND ISSUANCE OF BILL OF LADING, CHARTERERS SHALL HAVE THE RIGHT TO CHANGE ITS NOMINATION OF LOADING AND/OR DISPORT IN ACCORDANCE WITH PART I C AND D OF THE CHARTER PARTY. ANY EXTRA TIME AND EXPENSE INCURRED BY

OWNERS IN COMPLYING WITH CHARTERERS INSTRUCTIONS SHALL BE FOR CHARTERERS ACCOUNT AND CALCULATED IN ACCORDANCE WITH PART II CLAUSE 4 OF THIS CHARTER. FREIGHT TO BE BASED ON THE VOYAGE ACTUALLY PERFORMED. CHARTER SHALL HAVE THE RIGHT TO MAKE AS MANY CHANGES AS IT DEEMS NECESSARY.

23. FLORIDA STRAIT TRANSIT CLAUSE

VESSEL, WHEN TRANSITING THE FLORIDA STRAITS AREA FROM KEY BISCAYNE SOUTH TO THE DRY TORTUGAS SHALL ENDEAVOR TO MAINTAIN A MINIMUM DISTANCE OF TEN (10) MILES OFF THE OUTER NAVIGATIONAL AIDS MARKING THE REEFS OFF THE FLORIDA COAST. IT IS UNDERSTOOD AND AGREED THAT THE FIXTURE RATE INCLUDES ALL COMPENSATION FOR VESSEL TRACK TAKEN.

24. DRUG AND ALCOHOL POLICY

OWNER WARRANTS THAT IT HAS IN FORCE A POLICY ON DRUGS AND ALCOHOL ABUSE APPLICABLE TO THE VESSEL WHICH MEETS OR EXCEEDS THE STANDARDS IN THE OIL COMPANIES INTERNATIONAL MARINE FORUM GUIDELINES FOR CONTROL OF DRUGS AND ALCOHOL ONBOARD SHIP, DATED JANUARY 1990 (OCIMF). OWNER FURTHER WARRANTS THAT THIS POLICY WILL REMAIN IN EFFECT DURING THE TERM OF THIS CHARTER AND THAT OWNER SHALL EXERCISE DUE DILIGENCE TO ENSURE THAT THE POLICY IS COMPLIED WITH.

25. P & I INSURANCE **(AMENDED)**

OWNER WARRANTS THAT IT HAS BEEN IN PLACE WITH ITS P & I CLUB INSURANCE COVERAGE FOR OIL POLLUTION OF AT LEASE**US DOLLARS ONE BILLION** AND THAT THIS COVERAGE WILL REMAIN IN PLACE THROUGHOUT THE PERIOD OF THIS CHARTER.

IF REQUESTED BY CHARTERER OWNER SHALL PROMPTLY FURNISH TO CHARTERER PROPER EVIDENCE OF SUCH P & I INSURANCE AND EXCESS INSURANCE IMMEDIATELY UPON REQUEST OR AT ANY TIME DURING THE CHARTER TERM.

26. EXCESS BERTH OCCUPANCY

IF AFTER HOSES ARE DISCONNECTED VESSEL REMAINS AT BERTH SOLELY FOR SHIPS PURPOSES, OWNERS WILL BE RESPONSIBLE FOR ANY COSTS CHARGED TO CHARTERERS BY TERMINAL, SUPPLIER OR RECEIVERS.

IF VESSEL REMAINS AT CHARTERERS OWNED FACILITIES FOR ITS OWN PURPOSES AND COSTS ARE INCURRED BY CHARTERER WHICH CAN BE DOCUMENTED AND SUPPORTED SOLELY DUE TO VESSEL REMAINING AT BERTH OWNER WILL BE RESPONSIBLE FOR ALL COSTS INCURRED.

27. SHIFTING **(AMENDED)**

IF MORE THAN ONE BERTH AT LOAD PORT(S) OR DISPORT(S) IS USED, SHIFTING **TIME AND** EXPENSES TO BE FOR CHARTERERS ACCOUNT, EXCEPT THAT SHIFTING **TIME AND** EXPENSES FROM THE ANCHORAGE TO FIRST BERTH WILL NOT BE FOR CHARTERER'S ACCOUNT.

28. CITGO IMO/PTSR

OWNER WARRANTS VESSEL IS IN FULL COMPLIANCE WITH IMO AND U.S. PORT AND TANKER SAFETY REGULATIONS AND ANY DELAYS DUE TO FAILURE OF THIS WARRANTY SHALL BE FOR THE SOLE ACCOUNT OF OWNER.

29. VESSEL ELIGIBILITY

OWNER WARRANTS THAT VESSEL IS IN ALL RESPECTS ELIGIBLE UNDER APPLICABLE LAWS AND REGULATIONS FOR TRADING TO THE PORTS AND PLACES SPECIFIED IN PART I C & D. VESSEL SHALL AT ALL TIMES HAVE ON BOARD ALL CERTIFICATES, RECORDS, & OTHER DOCUMENTS REQUIRED FOR SUCH SERVICE.

30. LITIGATION/ARBITRATION

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY SHOULD THE SUM CLAIMED BY EACH PARTY EXCLUDING INTEREST AND COST NOT EXCEED U.S. $50,000.00 (FIFTY THOUSAND UNITED STATES DOLLARS) THE DISPUTE IS TO BE GOVERNED BY THE "SHORTENED ARBITRATION PROCEDURE" OF THE SOCIETY OF MARITIME ARBITRATORS INC. (S.M.A.) OF NEW YORK, AS DEFINED IN THE SOCIETY'S CURRENT RULES FOR SUCH PROCEDURE.

31. HEAT UP **(AMENDED)**

CHARTERERS HAVE THE OPTION TO REQUEST VESSEL AND OWNERS WILL ENDEAVOR TO RAISE LOADED CARGO TEMPERATURE ON VOYAGE, TIME **AND WEATHER** PERMITTING A MAXIMUM OF 25 DEGREES FAHRENHEIT TO THE AGREED CHARTER PARTY MAXIMUM.

CHARTERER WILL REIMBURSE OWNERS FOR ACTUAL COST OF ADDITIONAL BUNKERS CONSUMED TO RAISE TEMPERATURE. PAYMENT TO BE MADE AGAINST OWNERS INVOICE AND ACCOMPANIED BY SUPPORTING DOCUMENTS.

32. CHARTER PARTY ADMINISTRATION **(OWNERS REQUIRE A FORMAL WRITTEN CHARTER PARTY)**

THIS CHARTER PARTY MAY BE INCORPORATED BY REFERENCE IN THE BROKER'S FIXTURE CONFIRMATION TELEX OF THE SPECIFIC TERMS OF CHARTER FOR A PARTICULAR VESSEL. SUCH SPECIFIC TERMS AND REFERENCED CHARTER PARTY MUST BE ACCEPTED BY OWNER AND CHARTERER THROUGH TELEXES WITHIN TWO (2) WORKING DAYS AFTER THE DATE OF SUCH BROKER'S FIXTURE CONFIRMATION. OTHERWISE, THE BROKER'S FIXTURE CONFIRMATION TELEX IS VOID AND UNENFORCEABLE.

33. LOOP CLAUSE **(DELETED)**

34. CONOCO DEMURRAGE

CHARTERER SHALL NOT BE OBLIGATED TO PAY ANY CLAIM FOR DEMURRAGE UNLESS THE FULL CLAIM AND SUPPORTING DOCUMENTATION ARE RECEIVED BY CHARTERER WITHIN 90 DAYS OF THE DATE OF THE COMPLETION OF CARGO DISCHARGE.

35. CITGO CUBA CLAUSE

OWNER WARRANTS VESSEL HAS NOT TRADED TO CUBA IN THE LAST 180 DAYS.

36. CITGO OPA REQUIREMENTS CLAUSE (REVISED 4/96)

OWNER WARRANTS THAT THE VESSEL OWNER OR OPERATOR HAS, PRIOR TO FEBRUARY 18, 1993, SUBMITTED TO U.S. COAST GUARD FOR APPROVAL A RESPONSE PLAN FOR THE VESSEL (VRP) WHICH MEETS IN FULL REQUIREMENTS OF THE U.S. OIL POLLUTION ACT OF 1990, THE GOVERNMENTAL REGULATIONS ISSUED THEREUNDER, THE U.S. COAST GUARD NAVIGATIONAL AND VESSEL INSPECTION CIRCULAR NO. 8-92 AND ANY RULE OR REGULATION IN SUBSTITUTION OF, OR SUPPLEMENTARY TO, SUCH CIRCULAR (COLLECTIVELY "VRP REQUIREMENTS"), THAT THE VRP SHALL BE APPROVED, AND THE VESSEL OPERATED IN COMPLIANCE THEREWITH, WHEN AND AS REQUIRED BY THE VRP REQUIREMENTS AND THAT THE OWNER SHALL ENSURE THAT THE OWNER OR OPERATOR OF THE VESSEL AND THE VESSEL FULLY MEET ALL OTHER REQUIREMENTS OF OPA AND ANY GOVERNMENTAL REGULATIONS OR GUIDELINES ISSUED THEREUNDER.

THIS CLAUSE DOES NOT IN ANY WAY LESSEN THE OVERALL EFFECT OR RELIEVE THE OWNER OF ANY STATE OBLIGATIONS IN RESPECT TO VESSEL RESPONSE PLANS OR OTHER POLLUTION REQUIREMENTS.

37. CARGO TEMPERATURE MAINTENANCE (NEW 4/96)

OWNER WARRANTS THAT VESSEL WILL UTILIZE ITS FULL HEATING CAPABILITIES THROUGHOUT VOYAGE AND DISCHARGE TO MAINTAIN LOADED TEMPERATURES OF THE CARGO BUT IN NO CASE SHALL THIS TEMPERA-

TURE BE LESS THAN MINIMUM 150 DEGREES FAHRENHEIT.

MASTER TO PROVIDE DAILY CARGO TEMPERATURE READINGS FOR EACH TANK TOGETHER WITH NOON POSITION.

38. HOT WORK PERMIT (NEW 4/96)

VESSEL OWNER SHALL OBTAIN A "HOT WORK' PERMIT FROM THE MANAGER OF THE TERMINAL BEFORE PERFORMING ANY WELDING, ACETYLENE CUTTING, OR SIMILAR ACTIVITIES WHICH COULD BE THE IGNITION SOURCE OF FLAMMABLE VAPORS.

39. SAVANNAH BERTH OPERATIONS (NEW 4/96)

IF DISCHARGING AT SAVANNAH, REPAIR WORK OF ANY KIND (EXCLUDING REPAIRS NECESSARY FOR THE SAFETY OF CREW/VESSEL/CARGO/TERMINAL) AND/OR DELIVERY OF STORES OR SPARES AND/OR BUNKERING OPERATIONS ARE NOT PERMITTED AT THE DISCHARGE BERTH.

40. ADDRESS COMMISSION (NEW 4/96)

AN ADDRESS COMMISSION OF 1.25 PERCENT ON FREIGHT, DEADFREIGHT AND DEMURRAGE SHALL BE PAYABLE TO CHARTERER AND SHALL BE DEDUCTIBLE FROM PAYMENT.

41. ISM COMPLIANCE (NEW 5/98)

OWNER GUARANTEES THAT THIS VESSEL COMPLIES FULLY (OR WILL COMPLY BY JULY 1, 1998) WITH THE INTERNATIONAL SAFETY MANAGEMENT ISM CODE AND IS IN POSSESSION OF A VALID SAFETY MANAGEMENT

CERTIFICATE AND WILL REMAIN SO FOR THE ENTIRETY OF HER EMPLOYMENT UNDER THIS CHARTER PARTY. OWNER WILL PROVIDE CHARTERER WITH SATISFACTORY EVIDENCE IF REQUIRED TO DO SO. ANY DELAY AS A RESULT OF NON-COMPLIANCE SHALL NOT COUNT AS USED LAYTIME OR DEMURRAGE IF ON DEMURRAGE.

42. YEAR 2000 AWARENESS (NEW 5/98) **(DELETED)**

43. **CITGO YUGOSLAVIA CLAUSE**

ON APRIL 5, 1999 THE UNITED STATES GOVERNMENT ISSUED A DIRECTIVE (TOGETHER WITH "SHIPPING AGENTS GUIDELINE - U.S. PORT ENTRY PROHIBITION FOR THE FEDERAL REPUBLIC OF YUGOSLAVIA" ISSUED BY THE U.S. COAST GUARD) WHICH PROVIDED THAT ANY VESSEL REGARDLESS OF FLAG REGISTRATION WHICH(1) HAS A YUGOSLAVIAN(DEFINED AS SERBIA OR MONTENEGRO) CITIZEN AS THE MASTER, CHIEF ENGINEER OR (2) IS OWNED, OPERATED (INCLUDING MANAGING OWNER OR OPERATORS) OR UNDER CHARTER TO YUGOSLAVIAN ENTITIES SHALL NOT BE PERMITTED TO ENTER U.S. PORTS (THE "EXECUTIVE ORDER"). OWNERS REPRESENTS, WARRANT AND HEREBY CERTIFIES THAT OWNERS AND THE VESSEL CHARTERED UNDER THIS CHARTER PARTY SHALL AT ALL TIMES BE IN COMPLIANCE WITH THE ABOVE EXECUTIVE ORDER AND TO THE BEST OF THE OWNER'S KNOWLEDGE THAT THE VESSEL WILL NOT BE DENIED ACCESS TO U.S. TERRITORIAL WATER AS A RESULT OF NON COMPLIANCE WITH THE EXECUTIVE ORDER. OWNERS AGREE TO

INDEMNIFY AND HOLD CHARTERER HARMLESS FROM ANY DAMAGES OR LOSS WHICH CHARTERER MAY SUFFER AS A RESULT OF THE VESSEL BEING REFUSED ENTRY INTO U.S. WATER AS A RESULT OF NON COMPLIANCE WITH THE EXECUTIVE ORDER.

ADDENDUM B

FROM: <chartering@crweber.com>
DATE: 12-NOV-2004 17:01
MSG.: 1357501

Charles R Weber

NOVEMBER 12, 2004. PH-J/KDA
CHARLES R. WEBER CO., INC.

TO: CITGO PETROLEUM CORPORATION
ATTN: ROBERT TAYLOR

TO: HEIDMAR
ATTN: JIM HURLEY

- FINAL RECAPITULATION -

WE ARE PLEASED TO CONFIRM THE FOLLOWING FIXTURE FOR ACCOUNT OF CITGO ASHPHALT REFINING COMPANY WITH ALL SUBJECTS FULLY LIFTED AS BELOW:

- (TITLE) -

CHARTERERS:	CITGO ASPHALT REFINING COMPANY
OWNERS:	HEIDENREICH MARINE INC. AS AGENTS FOR STAR TANKERS INC.
	AS OWNERS
BROKER:	CHARLES R. WEBER CO., INC.
C/P FORM:	ASBATANKVOY
C/P DATE:	NOVEMBER 12, 2004.

- (VESSEL) -

VESSEL .....:	ATHOS I
OWNER .....:	HEIDENREICH MARINE INC AS AGENTS FOR STAR TANKERS INC.

EX-NAME ..... :	STELLA MAR/CHARTER OAK/BRIGHT OAK
SDWT ..... :	60880 TONNES
SDRAFT ..... :	12.423 METRES
LOA ..... :	228.17 METRES
BEAM ..... :	32.24 METRES
FLAG ..... :	CYPRUS
YEAR BUILT ..... :	FEB 25, 1983
CLASS ..... :	LLOYDS REGISTER
CUBIC 98 PCT ..... :	70674 CU. M.
SLOP 98 PCT ..... :	2832 CU.M.
SPEED BALLAST .... :	13.90
SPEED LADEN ..... :	13.80
SEGREGATIONS ..... :	3
NO PUMPS ..... :	3 X 2000 CUM/HR STEAM CENTRIFUGAL
TPI/TPC ..... :	N/A SEE TPC / 64.9 TONNES
BCM ..... :	115.58 METRES
KTM ..... :	49.4 METRES
IGS ..... :	YES
COW ..... :	YES
SBT ..... :	YES
GRT / NRT ..... :	37895 TONNES / 16672 TONNES
PCGT / PCNT ..... :	29272.64 / 29272.64
SCGT / SCNT ..... :	/ 36107.27

DERRICKS ..... :	2 X 15 TONNES
COATED ..... :	N/A
COILED ..... :	YES
ITF..... :	YES
HULL ..... :	DOUBLE SIDE
CALL SIGN ..... :	P3WL7
P AND I..... :	STANDARD STEAMSHIP OWNERS PANDI ASSOC (BERMUDA) LTD
QUALIFIED ..... :	OBRIENS OIL POLLUTION SERVICES
OIL SPILL ..... :	MARINE SPILL RESPONSE CORP.
USCG COC EXPIRE . :	OCT 13, 2005
IMO NO..... :	8117079
LAST 3 CGOS..... :	FUEL OIL, CRUDE, CRUDE
APPROVALS ..... :	TBOOK-CONOCOPHILLIPS / EL PASO / STARTANKERS / USCG / C.O.C

- (CARGO QUANTITY) -

CARGO: PART CARGO MINIMUM 50,000 MTS CHARTERER'S OPTION UPTO FULL CARGO WITH NO DEADFREIGHT FOR CHARTERERS ACCOUNT PROVIDED MINIMUM QUANTITY SUPPLIED.

- (CARGO DESCRIPTION) -

CRUDE AND/OR DPP EXCLUDING LSWR AND CBFS BUT INCLUDING VGO

GRADE: MAXIMUM TWO GRADES

SEGREGATION: WITHIN VESSEL'S NATURAL SEGREGATION

HEATING: CHARTS OPTION SEE CITGO CLAUSE NOS. 31 AND 37. VESSEL MAX LOADED TEMP 165 DEG FAHRENHEIT.

- (DATES) -

LAYDAYS: NOVEMBER 16/18, 2004

ITINERARY: VESSEL SPOT CARIBS

ETA BASIS: GUARANO PILOT STATION FOR BAJO GRANDE NOV 12/1600 HRS

- (GEOGRAPHICAL) -

LOAD RANGE: 1/2 SAFE PORTS CARIBBEAN SEA EXC C/O/H AND CARIPITO

DISCHARGE RANGE: 1/2 SAFE PORT(S) USAC IF NYNNGWB EXCLUDING FLORIDA OR CHOPT

1/2 SAFE PORT(S) US GULF EXCLUDING FLORIDA OR CHOPT

1/2 SAFE PORT(S) CARIBBEAN SEA EXC C/O/H AND CARIPITO/ MARTINIQUE

- (FINANCIAL) -

FREIGHT RATE: WORLDSCALE 400 - BASIS DISCHARGE USAC-USG PLUS 10 WS POINTS (MIN FLAT USD 2.50 PMT) - BASIS DISCHARGE CARIBS PLUS 5 WS POINTS FOR HIGH HEAT

OVERAGE RATE: IF ANY AT 50 PCT OF FIXING RATE.

DEMURRAGE: USD 42,000 PER DAY PRO RATA

LAYTIME: AS PER WORLDSCALE

SPECIAL PROVISIONS:

- ATHOS I - WARRANTED LIFT 47,000 MTS BASIS 36 FT. FRESH WATER SAILING DRAFT AT LOAD PORT.

- OWS CONFIRM VSL(S) ABLE TO MAINTAIN MAXIMUM 50 FT. WATERLINE TO MANIFOLD DURING DISCHARGE AT SAVANNAH, GA.

- OWS CONFIRM VSL(S) COMPLIES WITH MAXIMUM AIR DRAFT OF 180 FT.

ADDITIONAL CLAUSES:

1. ANY DELAYS AND/OR COSTS, NOT NORMALLY INCURRED, DUE TO USCG OR OTHER U.S. GOVERNMENT INSPECTIONS, TO BE SHARED EQUALLY BETWEEN OWNERS AND CHARTERERS.

2. AT NY, IF ESCORT TUGS REQUIRED, THEN SUCH COST TO BE FOR CHARTERERS' ACCOUNT.

3. NOTWITHSTANDING ANY OTHER CLAUSE IN THIS CHARTER PARTY TO THE CONTRARY, A NOMINATION OF OR REQUEST OR ORDER TO CHANGE PORT(S) IN THE U.S. MUST BE GIVEN TO OWNER VERBALLY AND CONFIRMED IN WRITING LATEST 96 HOURS PRIOR TO ESTIMATED ARRIVAL IN ORDER TO BE VALID. ANY DELAY EXPENSE OR OTHER CONSE-QUENCE OF FAILING TO GIVE SUCH TIMELY

REQUEST/ORDER SHALL BE FOR CHARTERER'S ACCOUNT.

4. ANY TAXES AND OR DUES ON CARGO AND/OR FREIGHT FOR CHARTERERS ACCT.

5. WORLDSCALE HOURS TERMS CONDITIONS TO APPLY.

6. EXXON EARLY LOADING CLAUSE.

7. CITGO COMPLIANCE WITH U.S. CUSTOMS AND BORDER PROTECTION MANIFEST REGULATIONS CLAUSE:

THE VESSEL OWNER SHALL COMPLY WITH ALL APPLICABLE U.S. CUSTOMS AND BORDER PROTECTION ("CBP") REGULATIONS, INCLUDING, BUT NOT LIMITED TO, 19 CFR §4.7 PERTAINING TO ELECTRONICALLY FILING THE MANIFEST FOR THE CARGO WITH CBP AT LEAST 24 HOURS PRIOR TO ARRIVAL AT A U.S. PORT, TO HAVING A CURRENT INTERNATIONAL CARRIERS BOND, AND TO HAVING A STANDARD CARRIER ALPHA CODE ("SCAC") UNIQUE NUMBER.

8. HEIDMAR U.S. CUSTOMS CLAUSE:

U.S. CUSTOMS CLEARANCE FOR CARGO DISCHARGING IN, OR TRANSITING A U.S. PORT OR TERRITORY SUBJECT TO CONTROL BY THE BUREAU OF U.S. CUSTOMS AND BORDER PATROL (CBP, CHARTERER'S WARRANT THAT ALL NECESSARY DETAILS REQUIRED BY CBP FOR CLEARANCE OF THE CARGO, INCLUSIVE OF BUT NOT LIMITED TO, SHIPPER, CONSIGNEE AND NOTIFY PARTY FULL NAME, ADDRESS AND PHONE NUMBER OR TELEX NUMBER, WILL BE INCLUDED ON EACH BILL OF LADING OR

ALTERNATIVELY SUPPLIED TO OWNER IN WRITING A MINIMUM OF 36 HOURS PRIOR TO VESSEL'S ARRIVAL AT THE FIRST DESIGNATED U.S. PORT OF DISCHARGE. FOR VOYAGES OF LESS THAN 24 HOURS IN DURATION THIS INFORMATION MUST BE SUPPLIED PRIOR TO DEPARTURE FROM THE LOAD PLACE OR PORT. ANY DELAYS, FINES OR PENALTIES INCURRED DUE TO CHARTERER'S FAILURE TO COMPLY WITH THE ABOVE WILL BE FOR CHARTERER'S ACCOUNT.

9. ANY DELAYS INCURRED ENTERING OR DEPARTING PORTS IN LAKE MARACAIBO CAUSED BY AWAITING TUGS, PILOTS AND UNLIT BUOYS SHALL COUNT AS LAYTIME OR TIME ON DEMURRAGE IF THE VESSEL IS ALREADY ON DEMURRAGE.

10. VITOL ISPS (REV 06/08/04):

ISPS CLAUSE FOR VOYAGE CHARTER PARTIES (A) (i) It is a condition of this charter party that, from the date of coming into force of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) in relation to the Vessel, both the Vessel and "the Company" (as defined by the ISPS Code) shall comply with the requirements of the ISPS Code relating to the Vessel and "the Company". Upon request the Owners shall provide a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) to the Charterers. The original of the ISSC, or interim ISSC, and the original of the Continuous Synopsis Record (mandatory after 1st July 2004) must be on board the vessel at all times. The Owners shall provide

the Charterers with the full style contact details of the Company Security Officer (CSO).

(ii) Except as otherwise provided in this Charter Party, loss, damage, expense or delay (which shall not count as laytime or, if the vessel is on demurrage, as time on demurrage),* excluding consequential loss, caused by failure on the part of the Owners or "the Company" or the Vessel and/or its crew to comply with the requirements of the ISPS Code or this Clause shall be for the Owners' account.

(B) (i) Upon the specific request of Owner, the Charterers shall provide the CSO and the Ship Security Officer (SSO)/Master with their full style contact details and any other available information the Owners reasonably require to comply with the ISPS Code.

(ii) Except as otherwise provided in this Charter Party, loss, damage, expense, excluding consequential loss, caused by failure on the part of the Charterers to comply with this Clause shall be for the Charterers' account and any delay caused by such failure shall count as laytime or, if the vessel is on demurrage, as time on demurrage.

(C) Provided that the delay is not caused by the Owners' failure to comply with their obligations under the ISPS Code, and that the measure imposed by the port facility or by relevant authorities applies to all vessels in that port and not specifically to Owners vessel, the following shall apply:

(i) Notwithstanding anything to the contrary provided in this Charter Party, the Vessel shall be entitled to tender Notice of Readiness even if not cleared due to applicable security regulations or measures imposed

by a port facility or any relevant authority under the ISPS Code.

(ii) Any delay resulting from measures imposed by a port facility or by any relevant authority under the ISPS Code shall count as half laytime or half time on demurrage if the Vessel is on demurrage. If the delay occurs before laytime has started or after laytime or time on demurrage has ceased to count as provided for elsewhere within this charter party, it shall nevertheless count as half laytime or, if the vessel is on demurrage, as half time on demurrage, and always in accordance with A(ii) and except for any reason directly attributable to the status/circumstances of the Owners and/or Master and/or Crew and/or Vessel.

(iii) Notwithstanding anything to the contrary provided in this Charter Party, any additional costs or expenses whatsoever solely arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code including, but not limited to, security guards, launch services, tug escorts, port security fees or taxes and inspections, unless such costs or expenses result solely from the Owners' negligence shall be shared equally between owner and charterer.

(D) All measures required by the Owners to comply with the Ship Security Plan shall be for the Owners' account.

(E) If either party makes any payment, which is for the other party's account according to this Clause, the other party shall reimburse the paying party all such reasonable and proven expenses.

- OWNER'S FULL ADDRESS:

HEIDENREICH MARINE, INC. AS AGENTS FOR
STAR TANKERS INC.
320 POST ROAD
DARIEN, CT 06820

- BANKING DETAILS IN U.S. DOLLARS VIA TELEGRAPHIC TRANSFER TO:

Citibank, N.A.
New York, New York
ABA No. 021000089
Account No. 30426088
Favor: Star Tankers Inc.

FOLLOWING CITGO PETROLEUM CLAUSES NOS. 1 THROUGH 42 (DATED MAY 27, 1999) AS AMENDED BELOW:

1 - ITOPF NEW 2/97

2 - YORK/ANTWERP REVISED 2/97

3 - USCG COMPLIANCE REVISED 4/96

4 - FINANCIAL RESPONSIBLITY

5 - PUMPING -

2ND LINE: DELETE "24 HOURS" AND INSERT "33 HOURS"

3RD LINE: AFTER "MANIFOLD" INSERT "EXCEPT WHEN PERFORMING STRIPPING, MAX THREE (3) HOURS".

4TH LINE: DELETE "24 HOURS" AND INSERT "33 HOURS".

ADD AT END "TIME SAVED IN PUMPING CANNOT BE ADDED TO THE STRIPPING ALLOWANCE".

6 - BUNKER INSPECTION

7 - CARGO RETENTION

8 - IGS-TIME FOR DE/RE-INERTING SHALL BE FOR CHARTS ACCT.

9 - C.O.W.REVISED 4/96

10 - SHIP TO SHIP TRANSFER - 2ND PARAGRAPH DELETE REFRENCES TO 'HALF' AND INSERT 'FULL'

11 - IN-TRANSIT LOSS - DELETE '.25' AND INSERT '.30'

12 - JURISDICTION

13 - CITGO BILL OF LADING INDEMNITY - DELETE AND INSERT CHEVRON LOI CLAUSE ALWAYS U.S. LAW TO APPLY.

14 - LIGHTERING-LINE 3 DELETE 'ANCHORING' AND INSERT 'ARRIVING AT THE LIGHTERING POSITION'.

LINE 6 INSERT THE FOLLOWING AHEAD OF 'SUCH', 'UNLESS OTHERWISE STIPULATED BY WORLDSCALE'.

ADD AT END OF CLAUSE 'ALL COSTS IN CONNECTION WITH SUCH LIGHTERAGE OPERATION TO BE FOR CHARTERERS ACCOUNT'.

15 - LAYTIME REVISED 5/98-PARA 1, LINE 4 DELETE 'NOT' AND INSERT 'ONE-HALF' BEFORE 'LAYTIME'. AT END INSERT 'OR ONE-HALF DEMURRAGE IF VESSEL ON DEMURRAGE'.

16 - WEATHER - 3RD LINE DELETE 'LIGHTERING'

17 - AGENCY

18 - BOARDING

19 - CITGO SHORE RELEASE - REV 5/98

20 - LAYDAYS NOTICE OF READINESS

21 - HOSES

22 - CITGO DIVERSION

23 - FLORIDA STRAIT TRANSIT

24 - DRUG AND ALCOHOL

25 - P + I INSURANCE CL - FIRST PARAGRAPH LINE 2 - DELETE "U.S. DOLLARS 500 MILLION PLUS" REPLACE WITH "U.S. DOLLARS ONE BILLION".

LINE 3 - DELETE "AN ADDITIONAL U.S. DOLLARS 200 MILLION".

26 - EXCESS BERTH OCCUPANCY

27 - SHIFTING - LINE 2 AND 3 AFTER 'SHIFTING' INSERT 'TIME AND'.

28 - CITGO IMO/PTSR

29 - VESSEL ELIGIBILITY

30 - LITIGATION/ARBITRATION

31 - HEAT-UP - AFTER 'TIME' INSERT 'AND WEATHER'.

32 - CHARTER PARTY ADMINISTRATION

33 - LOOP CLAUSE - DELETE

34 - CONOCO DEMURRAGE

35 - CITGO CUBA CLAUSE

36 - CITGO OPA REQUIREMENTS CLAUSE

37 - CARGO TEMPERATURE MAINTENANCE

38 - HOT WORK PERMIT

39 - SAVANNAH BERTH OPERATIONS

40 - ADDRESS COMMISSION

41 - ISM COMPLIANCE NEW 5/98

42 - YEAR 2000 AWARENESS NEW 5/98 - DELETE.

- CITGO YUGOSLAVIAN CLAUSE

COMMISSION(S): 1.25 PCT ADDRESS (PER CITGO CLS. 40) AND 1.25 PCT TO CHARLES R. WEBER CO., INC. ON FREIGHT, DEADFREIGHT AND DEMURRAGE.

END RECAP

WE THANK YOU FOR THE OPPROTUNITY TO CONCLUDE THE ABOVE BUSINESS ON YOUR BEHALF.

REGARDS

PH-J

KDA

ADDENDUM C

From: "Brian Van Aken"
<Brian.VanAken@heidmar.com>
To: <Athos.1@tsakos.seaservices.net>
cc: "Bulletin" <bulletin@heidmar.com>,
<mail@tsakoshellas.gr>

Subject: FW: ATHOS I/CITGOPET C/P NOV 12, 2004 - FIXTURE NOTE

Date: Mon, 15 Nov 2004 08:33:20 -0500

Capt Markoutsis,

Pls find fixture note for upcoming voyage.

Subject: FW: ATHOS I/CITGOPET C/P NOV 12, 2004 - FIXTURE NOTE

FIXTURE NOTE

DATE ..... :	NOVEMBER 12, 2004
VESSEL ..... :	ATHOS I
VOYAGE # ..... :	896019
FILED ..... :	STAR POOL
ACCOUNT ..... :	CITGOPET
BROKER ..... :	WEBER
C/P DATE..... :	NOV 12, 2004
CARGO..... :	50K MT CRUDE HIGH HEAT MAX 2 GRADES WVNS
PREV DISPORT ..... :	STATIA NOV 09, 2004
LOADING ..... :	1/2 SP CARIBS
LAY/CAN ..... :	NOV 16 - 18
DISCHARGE ..... :	1/2 SP USAC OR 1/2 SP USG

Brgds, Brian