



Association of Transportation Law Professionals

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Fifth Circuit Holds Time Charterer Is Not Liable For Allision With A Barge And Dock In Houston Ship Channel

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In August, a panel of the Fifth Circuit Court of Appeals held that the time charterer of a bulk carrier, did not exercise operational control over the vessel to be deemed either a *de facto* vessel owner or bareboat charterer. Further, in *Grand Famous Shipping Limited v. China Navigation Company PTE., Limited*, – 45 F.4th – (5th Cir. 2022), 2022 WL 3351781, the Court held that the time charterer was not required to investigate either the vessel owner's finances or its safety management system before executing the time charter.

What Exactly is a Charter Party?

A charter party is a maritime contract for the lease or use of an owner's vessel. GRANT GILMORE & CHARLES L. BLACK, JR., *The Law of Admiralty* 193 (2d ed. 1975) defines a charter party as "arrangements and contractual engagements entered into when one person (the 'charterer') takes over the use of the whole of a ship belonging to another (the 'owner')". The three types of charter parties are (1) the voyage charter; (2) the demise or bareboat charter; and (3) the time charter. A time charter is a charter for a specific period of time. "The time charter is used where the charterer's affairs make it desirable for him to have tonnage under his control for a period of time, without undertaking the responsibilities of ship navigation and management of the long-term financial commitments of vessel ownership. *Id.* at 194.

China Navigation Time Chartered the M/V YOCHOW

In 2013, Grand Famous Shipping, Ltd. ("Grand Famous"), the owner of a bulk carrier,¹ executed a time charter party with China Navigation for the carriage of cargo for a specific period of time. The negotiations were conducted through a shipbroker. The time charter was a traditional time charter—and the Owner—Grand Famous—remained responsible for navigation of the vessel, the crew, and all operational aspects. Notably, Grand Famous was also responsible for the insurance of the vessel, paying all port expenses and compliance with the International Ship Management Code ("ISM Code"). The charter party allowed China Navigation to paint its colors on the vessel during the term of the charter party.

An Exhausted Helmsman Steered the M/V YOCHOW into a Moored Barge and Dock

On June 13, 2018, the M/V YOCHOW was sailing through the Houston Ship Channel. Although the captain directed the helmsman to steer hard right (starboard), the exhausted crewmember steered the vessel in the opposite direction. The M/V YOCHOW

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then allided with a moored barge, the OSG 243, at berth at Dock A. The allision² shoved the OSG 243 into Dock A, causing substantial damage to Dock A and the barge. Two days later, Overseas Shipholding Group, Inc. ('Overseas') the owner of the OSG 243 barge (the "barge") filed suit against the M/V YOCHOW, *in rem*, Grand Famous, *in personam*, and against China Navigation, the time charterer. Overseas asserted that the cost of repairing the barge exceeded \$3.3 Million.

The District Court granted summary judgment to China Navigation, the time charterer. Specifically, the District Court held that China Navigation was not negligent and did not function as the M/V YOCHOW's *de facto* owner.

China Navigation Had No Operational Control Over the M/V YOCHOW

The Fifth Circuit examined the terms of the time charter and concluded that China Navigation did not have operational control. The Court cited *Gale-Ebanks v. Chesapeake Crewing, LLC*, 525 F. Supp. 3d 620, 626 (D. Md. 2021) which held: "Courts are reluctant to determine that a time charterer has operational control over a vessel, which would render it an owner *pro hac vice*." The Court affirmed the District Court's decision, holding that the time charterer had no operational control.

China Navigation Was Not Negligent for Failing to Investigate the Owner's

Safety Management Protocol and Finances Before Executing the Time Charter

Overseas argued that China Navigation was negligent because it did not investigate the financial condition of Grand Famous or its Safety Management Protocol. The Panel concluded that Overseas' argument was without merit because this was not a requirement under federal law for a time charterer.

"We're on board with China Navigation. The general rule under traditional principles of admiralty law is that 'a time charterer who has no control over the vessel assumes no liability for negligence of the crew or unseaworthiness of the vessel absent a showing that the parties to the charter intended otherwise"

Id. at *5 citing *In re P & E Boat Rentals, Inc.*, 872 F.2d 642, 647 (5th Cir. 1989). Accordingly the Court held that China Navigation was not negligent and was not responsible for the safety protocols of the M/V YOCHOW.

¹ M/V YOCHOW is a 180 foot cargo container, bulk carrier <https://www.vesselfinder.com/vessels/YOCHOW-IMO-9728394-MMSI-477855600>.

² Allision means a moving vessel strikes a stationary object.