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*In The*  
**United States Court of Appeals**  
*for the*  
**Third Circuit**

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Case No. 11-2576 (CON)

IN RE: PETITION OF FRESCATI SHIPPING COMPANY, LTD., AS OWNER  
OF THE M/T ATHOS I AND TSAKOS SHIPPING AND TRADING, S.A., AS  
MANAGER OF THE ATHOS I FOR EXONERATION FROM OR  
LIMITATION OF LIABILITY

Case No. 11-2577 (L)

UNITED STATES OF AMERICA,

*Appellant*

v.

CITGO ASPHALT REFINING COMPANY;  
CITGO PETRO CORPORATION;  
CITGO EAST COAST OIL CORPORATION

*Appeal from an Order entered by the  
United States District Court for the Eastern District of Pennsylvania*

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**FINAL BRIEF FOR APPELLEES**

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**CHAFFE McCALL, L.L.P.**  
DEREK A. WALKER  
J. DWIGHT LEBLANC, JR.  
DOUGLAS L. GRUNDMEYER  
2300 Energy Centre  
1100 Poydras Street  
New Orleans, Louisiana 70163  
(504) 585-7000

**PALMER, BIEZUP & HENDERSON LLP**  
RICHARD Q. WHELAN  
FRANK P. DEGIULIO  
190 North Independence Mall West  
Suite 401  
Philadelphia, PA 19106  
(215) 625-9900

*Attorneys For Appellees, CITGO Asphalt Refining Company,  
CITGO Petroleum Corporation, and CITGO East Coast Oil Corporation*

arbitration proceeding in London against Star under the terms of the Time Charter between them, seeking to recover the same losses under that contract. As of the conclusion of the trial in December 2010, Frescati’s arbitration against Star remained pending.

After the 41-day bench trial of the consolidated cases—which involved 61 live witnesses, 48 witnesses by deposition, and 1,800 exhibits—the district court issued its Adjudication exonerating CARCO.<sup>15</sup> The trial judge denied all tort and contract claims. The court entered a Judgment Order in each of the consolidated actions against Frescati and the Government.<sup>16</sup>

### **COUNTER-STATEMENT OF THE FACTS**

The district court’s Adjudication sets forth the relevant facts. The salient events from the start of the voyage to the aftermath of the ATHOS casualty are largely indisputable, and the trial record supports the judge’s findings against appellants on the facts that were contested.

#### **The Charter Parties**

More than four years before the oil spill, Frescati time chartered the ATHOS to Star, the “chartered” owner of the vessel.<sup>17</sup> Under the Time Charter, Star had unrestricted freedom to subcharter the vessel.<sup>18</sup>

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<sup>15</sup> [JA-6-23](#) [Adjudication].

<sup>16</sup> [JA-4-5](#) [Doc. 618, No. 05-0305; Doc. 339, No. 08-2898].

<sup>17</sup> [JA-1446-1470](#) [D-92 (Time Charter)].

On November 12, 2004, Star subchartered the ATHOS to CARCO for a single voyage from Venezuela to CARCO's refinery at Paulsboro.<sup>19</sup> A Fixture Recapitulation summarized the terms of their contract under the standard Asbatankvoy form.<sup>20</sup> The subcharter Preamble stated that it was an agreement:

between HEIDENREICH MARINE INC. AS AGENT FOR STAR TANKERS INC. chartered owner/~~owner~~ (hereinafter called the "Owner") of the [ATHOS] (hereinafter called the "Vessel") and CARCO ASPHALT REFINING COMPANY (hereinafter called the "Charterer").<sup>21</sup> [strike-mark in original; emphasis added]

As the trial judge concluded, the "owner" defined in the Subcharter was clearly the chartered owner, Star, not Frescati.<sup>22</sup> Frescati did not negotiate the terms of the Fixture Recap or the Subcharter and never saw either document.<sup>23</sup> Tsakos admits it had no contract with either Star or CARCO.<sup>24</sup>

Nothing in the Time Charter required Star to name Frescati as a third-party beneficiary of any voyage subcharter.<sup>25</sup> The Subcharter between Star and CARCO contained no such clause.<sup>26</sup> Star was not a party to this litigation, and no

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<sup>18</sup> [JA-612](#) [Hajimichael Dep. 225:1-17]; [JA-606](#) [(Hajimichael-Day 16) 7:11-25]; [JA-842-843](#); [847](#) [Papageorgiou Dep. (02/08/08) 95:21-96:3].

<sup>19</sup> [JA-1632-1652](#) [D-606 (Subcharter)].

<sup>20</sup> [JA-1545-1546](#) [D-170 (E-mail-Fixture 11/15/04)].

<sup>21</sup> [JA-1632-1652](#) [D-606 (Subcharter)].

<sup>22</sup> [JA-18](#) [Adjudication, 13].

<sup>23</sup> [JA-843-846](#) [Papageorgiou Dep. (02/08/08) 96:4-9; 108:14-110:1].

<sup>24</sup> [JA-613-614](#) [Hajimichael Dep. 270:3-7, 20-23, 25]; [JA-607](#) [(Hajimichael-Day 16) 8:12-17].

<sup>25</sup> [JA-1446-1470](#) [D-92 (Time Charter)].

<sup>26</sup> [JA-1632-1652](#) [D-606 (Subcharter)].