

Dear Time Charterers, Just Turn a Blind Eye: The Fifth Circuit Holds Time Charters Have No Duty to Hire a Competent Contractor

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I. INTRODUCTION

It was before dawn in the Houston Ship Channel when an exhausted helmsman aboard the *M/V Yochow* made a costly wrong turn.¹ While navigating the channel, Captain William Ewing ordered Helmsman Nan Win to steer the vessel hard to the right, but the helmsman instead made a sharp left turn.² Win was substantially fatigued at the time of the incident, allegedly due to the incommensurate work/rest schedule enforced by ship management.³ As a result of the helmsman’s misstep, the *Yochow* allided with the OSG 243 Barge.⁴ The barge was struck with such force that it was pushed into Dock A, where it had been berthed, causing substantial damage to both structures.⁵ The lessee of the dock, TPC Group LLC (TPC), filed suit against the owner of the *Yochow*, Grand Famous Shipping Ltd. (Grand Famous), and against its time charterer, China Navigation Co. (China Navigation), for negligence in the United States District Court for the Southern District of Texas.⁶ China Navigation subsequently filed a motion for summary judgment to dismiss all claims against it, arguing that it could not be held liable in tort for the allision

1. Grand Famous Shipping Ltd. v. China Navigation Co. Pte., Ltd., 45 F.4th 799, 800-01, 2022 AMC 252 (5th Cir. 2022).

2. *Id.*

3. *Id.* at 801.

4. *Id.*

5. *Id.*

6. *Id.* The barge owner (OSG 243 LLC) (OSG) also sued Grand Famous and China Navigation. Consequently, Beikun Shipping Tianjin Co. (Beikun), the technical manager of the *Yochow*, joined Grand Famous in bringing a limitation of liability action in the district court. After TPC and OSG filed answers to the limitation action, the district court consolidated the action for damages with the limitation action. *Id.*

because, as a mere time charterer, it was not responsible for the vessel's safety or for the acts of her crew.⁷ China Navigation also denied that it was independently negligent in its role as time charterer.⁸

In response to China Navigation's motion for summary judgment, TPC raised two distinct arguments.⁹ First, TPC argued that China Navigation was independently negligent as time charterer because it had failed to exercise reasonable care in verifying Grand Famous's competence as a contractor before selecting and employing it.¹⁰ TPC specifically asserted that China Navigation was obligated to "vet" Grand Famous's finances and the *Yochow*'s safety protocols to ensure their propriety before entering into a contract together.¹¹ If China Navigation had done so, according to TPC, it would have discovered the deficiencies in the vessel's safety procedures, namely her inadequate management of fatigued crewmembers, and the allision would have been prevented.¹² Second, TPC argued that China Navigation was the "de facto owner" of the *Yochow*, rendering China Navigation responsible for the vessel's safety and the crew's negligence.¹³ The district court granted China Navigation's motion for summary judgment, concluding that China Navigation was not the *Yochow*'s de facto owner and that it was not independently negligent because it did not owe any duty to vet Grand Famous.¹⁴ TPC appealed.¹⁵ Not persuaded by TPC's arguments, the United States Court of Appeals for the Fifth Circuit *held* that (1) China Navigation did not exercise sufficient operational control over the *Yochow* to be considered her de facto owner, and (2) unless agreed otherwise by contract or through custom, a time charterer does not have a duty to ensure the competence of a vessel owner prior to executing a charter party. *Grand Famous Shipping Ltd. v. China Navigation Co. Pte., Ltd.*, 45 F.4th 799, 2022 AMC 252 (5th Cir. 2022).

7. *Id.*

8. *Id.*

9. *Id.* TPC was the only party that filed a response to China Navigation's motion for summary judgment. *Id.* Accordingly, the noted case only concerns the issue of China Navigation's potential liability for damages and not the limitation of liability matter referenced in note 6. TPC was, however, acting on behalf of itself and OSG, among other interested parties, in arguing for a finding of China Navigation's liability. *See id.* at 800.

10. *Id.* at 801.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 802.

15. *Id.* at 800.

II. HISTORICAL BACKGROUND

General principles of negligence govern maritime torts.¹⁶ In admiralty, as in common-law negligence, parties are generally bound to exercise reasonable care under the circumstances.¹⁷ The precise duty required in any situation, while dependent upon the circumstances of the case, can stem from maritime custom and ordinary expectations of reasonableness and prudence.¹⁸ In the absence of well-defined maritime law principles relating to an asserted negligence claim, courts will incorporate general common-law principles.¹⁹ This is exemplified by the extension of “negligent hiring,” a common law tort, to maritime law by many federal courts.²⁰

A party may be liable for negligent hiring or “inadequate vetting” when it fails to employ a competent independent contractor.²¹ As defined in the *Restatement (Second) of Torts*, a competent contractor is one who “possesses the knowledge, skill, experience, and available equipment which a reasonable man would realize that a contractor must have in order to do the work which he is employed to do without creating unreasonable risk of injury to others.”²² An essential element of negligent hiring is the requirement of knowledge: the accused party must have known or reasonably should have known of the incompetence or unfitness of its contractual counterparty.²³ To that end, there exists—in some circumstances—a duty to inquire into or “vet” a counterparty’s fitness before selecting it as an independent contractor.²⁴ Although courts have adopted the tort of negligent hiring and its common-law principles into maritime law, fundamental admiralty principles limit the scope of its application. In particular, the question of who exactly is bound by the “vetting” duty depends upon certain principles and circumstances unique to maritime law, such as the “nature of the charter and the relationship

16. *Graham v. Milky Way Barge, Inc.*, 824 F.2d 376, 388 (5th Cir. 1987).

17. *In re Frescati Shipping Co., Ltd.*, 718 F.3d 184, 211 (3d Cir. 2013).

18. *Id.*

19. *Smolnikar v. Royal Caribbean Cruises Ltd.*, 787 F. Supp. 2d 1308, 1315, 2011 AMC 2941 (S.D. Fla. 2011).

20. *See id.* at 1318 (citing several admiralty cases in which tort liability was imposed for negligence in the hiring or the selection of a contractor).

21. *Grand Famous Shipping Ltd. v. Port of Houston Authority*, 574 F. Supp. 3d 438, 446-47, 2021 AMC 537 (S.D. Tex. 2021), *aff’d sub nom.* *Grand Famous Shipping Ltd. v. China Navigation Co. Pte., Ltd.*, 45 F.th 799 (5th Cir. 2022).

22. RESTATEMENT (SECOND) OF TORTS § 411 cmt. a (1965).

23. *Smolnikar*, 787 F. Supp. 2d at 1318.

24. *See id.* at 1319.

between the charterer and vessel owner.”²⁵ While courts have made the answer clear with respect to some circumstances, there is a notable absence of certainty with respect to others.

It is well-established that shipowners, for example, may be held liable for negligently hiring or selecting an independent contractor whose incompetence causes harm to a third party.²⁶ There exists “a paucity of well-developed jurisprudence” explaining the elements and standards of a claim for negligent hiring of an independent contractor against a shipowner.²⁷ Overall, it is clear that shipowners are duty-bound to inquire into the fitness of an independent contractor before employing the contractor.²⁸ With respect to claims against a time charterer for negligently contracting with an incompetent vessel owner, however, such comprehensive authority is nonexistent.²⁹

Under traditional admiralty law principles, time charterers assume no liability for the negligence of the crew or the unseaworthiness of the vessel unless the parties to the charter intend otherwise.³⁰ Despite this rule, a time charterer may be liable for its independent negligence in its capacity as a time charterer.³¹ For example, the United States Court of Appeals for the Fifth Circuit in *Graham v. Milky Way Barge* affirmed a time charterer’s independent negligence in dispatching a vessel through inclement weather.³² A time charterer’s duty to third parties with no connection to the charter stems, in part, from independent principles of tort law.³³ In *Hodgen v. Forest Oil Corp.*, the Fifth Circuit expressed that, notwithstanding general negligence principles, time charterers may only be held liable if their negligence occurs in carrying out the traditional responsibilities of a time charterer.³⁴ The Fifth Circuit’s approach reflects the consensus among courts in the recognition of independent time

25. *In re Dann Ocean Towing, Inc.*, 2018 WL 901716, at *6, 2018 AMC 745 (D.N.J. 2018).

26. *Smolnikar*, 787 F. Supp. 2d at 1318.

27. *Id.*

28. *See id.*

29. *See Grand Famous Shipping Ltd. v. Port of Houston Authority*, 574 F. Supp. 3d 438, 446, 448, 2021 AMC 537 (S.D. Tex. 2021). (“Whether a time charterer can be held liable for negligent vetting appears to be a matter of first impression in the Fifth Circuit.”) (“TPC cannot direct the Court to a single case that imposes a duty to vet on a time charterer.”).

30. *Matter of P & E Boat Rentals, Inc.*, 872 F.2d 642, 646-47 (5th Cir. 1989).

31. *Id.* at 647.

32. *Graham v. Milky Way Barge, Inc.*, 824 F.2d 376, 388 (5th Cir. 1987).

33. *Hodgen v. Forest Oil Corp.*, 87 F.3d 1512, 1519 (5th Cir. 1996).

34. *Id.* at 1520.

charterer negligence and the accompanying reluctance to hold time charterers liable for incidents concerning the vessel.³⁵

The concept of independent negligence provides the basis for the argument in favor of holding a time charterer liable for failing to ensure that it was contracting with a competent shipowner.³⁶ Few courts have considered this particular argument and, until recently, the Ninth Circuit was the only circuit court to lend it a brief discussion.³⁷ In *Alexander v. United States*, the Ninth Circuit declined to find a time charterer liable for hiring a bankrupt contractor because the plaintiff was unable to show that the charterer owed any duty to hire financially responsible parties.³⁸ The absence of any case law affirmatively recognizing the duty was the sole rationale offered by the court for its conclusion.³⁹ At the same time, the court did not refer to any authority that refuted the duty's existence in this context.⁴⁰ In *In re Dann Ocean Towing, Inc.*, the U.S. District Court for the District of New Jersey similarly expressed that a "true time charter" imputes no duty to a time charterer to educate itself about the vessel's procedures and history.⁴¹ This idea was expressed only in dicta, however, and the court ultimately denied the time charterer's motion for summary judgment because maritime law leaves open the possibility that the time charterer could be held liable for its hiring choice.⁴² Notably, *Alexander* and *Dann* each offered minimal analysis on the issue of the time charterer's duty.

III. COURT'S DECISION

In the noted case, the United States Court of Appeals for the Fifth Circuit limited the tort duty owed to third parties by time charterers, confining its application to the traditional spheres of activity over which the time charterer exercises control.⁴³ As a matter of first impression, the

35. See *In re Dann Ocean Towing, Inc.*, 2018 WL 901716, at *5 (D.N.J. 2018) (citing cases from the Fifth, Ninth, and Second Circuits in which time charterers were determined to have been independently negligent); see also *Grand Famous Shipping Ltd. v. Port of Houston Authority*, 574 F.Supp.3d 438, 448 (S.D. Tex. 2021) ("[C]ourts generally refuse to impose a duty on a time charterer where no other court has previously recognized such a duty.").

36. *Alexander v. United States*, 63 F.3d 820, 823 (9th Cir. 1995); *Grand Famous*, 574 F.Supp.3d at 446; *Dann Ocean Towing, Inc.*, 2018 WL 901716, at *5.

37. See *Alexander*, 63 F.3d at 642.

38. *Id.* at 824.

39. See *id.*

40. See *id.*

41. *Dann Ocean Towing*, 2018 WL 901716, at *4.

42. *Id.* at *6.

43. *Grand Famous Shipping Ltd. V. China Navigation Co. Pte. Ltd.*, 45 F.4th 799 (5th Cir. 2022).

Fifth Circuit held that a time charterer has no duty to ensure the competence of a contractual counterparty and specifically has no duty to vet an owner's finances or a vessel's safety management protocols prior to executing a time charter.⁴⁴ The court left open the possibility that the duty to vet can be assigned to a time charterer through industry custom.⁴⁵ The Fifth Circuit additionally held that, under the given circumstances, China Navigation as time charterer did not exercise sufficient operational control over the vessel to be considered her de facto owner.⁴⁶ Thus, China Navigation was not liable for the *Yochow*'s safety or the negligence of her crew because, under a time charter, the owner retains all control of the vessel and bears the responsibility for matters relating to its management.⁴⁷ The court consequently affirmed the district court's order granting summary judgment to China Navigation.⁴⁸

The Fifth Circuit first evaluated whether China Navigation exercised sufficient operational control over the *Yochow* to be considered her de facto owner.⁴⁹ In its analysis, the court demonstrated its reluctance to expand the duties and liabilities of a time charterer beyond their traditional scope.⁵⁰ This inquiry is primarily fact-dependent, so the court examined in detail China Navigation's actions and representations with respect to the time charter and the vessel.⁵¹ The Fifth Circuit rejected TPC's argument that China Navigation should be treated as the owner because it "held itself out to the world as such."⁵² Since the terms of the charter party clearly described China Navigation as the time charterer and Grand Famous as the owner with control over the vessel, the only way China Navigation could be considered a de facto owner is if it exercised operational control over the vessel despite the terms of the charter party.⁵³ The court ultimately determined that the facts, taken together, did not suggest that China Navigation exercised operational control over the *Yochow* to such an extent that it could be considered her de facto owner.⁵⁴

44. *Id.* at 806.

45. *See id.*

46. *Id.* at 807.

47. *Id.* at 803.

48. *Id.*

49. *Id.* at 802.

50. *Id.* at 804 ("the terms of the charter party control, and those terms clearly describe China Navigation as the time charterer and Grand Famous as the owner with control over the vessel"); ("Courts are reluctant to determine that a time charterer has operational control over a vessel, which would render it an owner *pro hac vice*.")) (quoting *Gale-Ebanks v. Chesapeake Crewing, LLC*, 525 F. Supp. 3d 620, 626 (D. Md. 2021)).

51. *See id.* at 804.

52. *Id.* at 803.

53. *See id.*

54. *Id.* at 804.

Second, the Fifth Circuit addressed the novel question of whether a time charterer has a duty to vet a vessel owner to ensure its competence prior to executing a charter party.⁵⁵ With no other comprehensive circuit decisions available for reference, the Fifth Circuit looked exclusively to its own maritime jurisprudence for guiding principles.⁵⁶ The court began its analysis broadly by acknowledging the well-settled principle that a time charterer can be liable to third parties as a result of its independent negligence outside of the time charter.⁵⁷ *Graham* is the Fifth Circuit's preeminent case on this point.⁵⁸ The court acknowledged the importance of the *Graham* decision because it advanced the notion that general negligence principles govern maritime torts.⁵⁹ However, despite introducing *Graham* as "instructive" precedent on maritime torts in the noted case, the Fifth Circuit also emphasized that it was an "unusual case" because it supported time charterer liability "for an incident concerning the vessel under charter."⁶⁰

The Fifth Circuit next discarded TPC's argument that, arising out of *Graham*, China Navigation owed a duty to third parties to vet the competence of Grand Famous as its independent contractor before chartering the *Yochow*.⁶¹ The court swiftly rejected an interpretation of *Graham* that would result in time charterers potentially facing "unlimited exposure" to liability for negligence to third parties.⁶² Adopting the reasoning articulated in *Hodgen*, the court explicitly refused to impose liability upon time charterers failing to employ a competent independent contractor on the basis that the act is not one traditionally performed under a time charter.⁶³ In *Hodgen*, the Fifth Circuit established that time charterers owe a "hybrid duty," arising out of contract and tort, to third parties which obligates them to exercise reasonable care when acting within the traditional spheres of activity that are under the time charterer's control.⁶⁴ Choosing the vessel's cargo, route, general mission, and the specific time that a vessel will perform its assignment are activities that

55. *Id.* at 802.

56. *See id.* at 805-06.

57. *Id.* at 805.

58. *Id.* ("[E]ven though China Navigation did not assume control over the *Yochow* by contract or otherwise, it may nevertheless be liable to third parties for negligence. *Milky Way* is instructive on this point.").

59. *Id.* at 806.

60. *Id.* at 805-06 (quoting *Graham v. Milky Way Barge, Inc.*, 824 F.2d 376, 388 (5th Cir. 1987)).

61. *Id.* at 806.

62. *Id.*

63. *Id.*

64. *Hodgen v. Forest Oil Corp.*, 87 F.3d 1512, 1520 (5th Cir. 1996).

have been expressly included in the traditional spheres over which a time charterer exercises control.⁶⁵ *Hodgen* importantly added that, beyond these traditional spheres, there is no duty owed by a time charterer.⁶⁶

In *Grand Famous*, the Fifth Circuit concluded that ensuring the competence of a contractual counterparty manifestly does not fall into a traditional sphere of activity over which time charterers exercise control.⁶⁷ The court acknowledged an exception that a time charterer can be liable for negligent acts taken outside of the traditional spheres of control if the parties agree otherwise through contract or implicitly through custom.⁶⁸ Without any analysis to that end, the Fifth Circuit declared that there was no indication in this case that the duty to vet a counterparty had been established by contract or custom.⁶⁹ Therefore, since ensuring the competence of a contractual counterparty is not considered within a traditional sphere of activity over which a time charterer exercises control, the Fifth Circuit concluded that there is no such duty required of a time charterer.⁷⁰ In the noted case, the Fifth Circuit specifically held that China Navigation did not owe a duty to vet *Grand Famous*'s finances or the *Yochow*'s safety management protocols.⁷¹

IV. ANALYSIS

In the noted case, the Fifth Circuit's decision to categorically deny the existence of a time charterer's duty to employ a competent independent contractor is one-dimensional and lacks consideration of context, but it is predictable given its case law.⁷² As the first U.S. appellate court to provide a consequential analysis of the "negligent hiring" issue in this context, the Fifth Circuit missed an opportunity to offer a persuasive analysis that could guide its lower courts and be adopted by other circuits.⁷³ Though the court's reasoning and ultimate conclusion is

65. *Id.*

66. *Id.*

67. *Grand Famous*, 45 F.4th at 806.

68. *Id.*

69. *See id.*

70. *Id.*

71. *Id.* at 806-07.

72. *See, e.g., Hodgen v. Forest Oil Corp.*, 87 F.3d 1512 (5th Cir. 1996).

73. *See Alexander v. United States*, 63 F.3d 820, 823 (9th Cir. 1995) (noting that the plaintiff could only present one case from the Third Circuit that recognized the duty of a charterer to employ a competent contractor, and that case had since been abrogated).

largely consistent with its prior jurisprudence,⁷⁴ the decision in the noted case is flawed.

The court's failure to consider the facts of the noted case was essentially a decision on the merits in and of itself, but its implications may reach even further than *Grand Famous*. First, as an appeal from an order granting summary judgment, the facts of the noted case were, of course, essential.⁷⁵ In its analysis of China Navigation's liability as time charterer, however, the court simply provided a synopsis of *Graham* and *Hodgen* and, from there, declared that time charterers are not responsible for contracting with competent shipowners.⁷⁶ Though these cases are undoubtedly relevant to the issue of time charterer liability and may reasonably support a finding that China Navigation did not owe a duty to vet *Grand Famous*, the Fifth Circuit's dismissive approach is significant.⁷⁷ *Hodgen* established an exception to its "traditional spheres of activity rule" by adding that parties can alter the typical allocation of control, and thus the duty, by contract or custom.⁷⁸ In the noted case, the court acknowledged the exception, but made no attempt to discuss it further before stating that "there is no indication that China Navigation and *Grand Famous* intended to 'vary the traditional assignment of control by contract or custom.'"⁷⁹

The aspect of custom is particularly relevant in *Grand Famous*.⁸⁰ By providing no reasoning for its conclusion and not pointing to any fact that supports it, it seems that the Fifth Circuit avoided the responsibility of articulating a standard or a test to determine when custom alters the traditional obligations of a time charterer.⁸¹ This is especially notable given that the facts of the noted case actually contain evidence to the

74. *Grand Famous Shipping Ltd. v. Port of Houston Authority*, 574 F.Supp.3d 438, 447 (S.D. Tex. 2021) ("Fifth Circuit precedent militates in favor of circumscribed time-charterer liability.").

75. *See Grand Famous*, 45 F.4th at 802 ("The district court granted summary judgment in China Navigation's favor.") ("Summary judgment is appropriate when 'there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law[.]' A disputed fact is material if it 'might affect the outcome of the suit under the governing law[.]'" (first quoting Fed. R. Civ. P. 56(a); then quoting *Hyatt v. Thomas*, 843 F.3d 172, 177 (5th Cir. 2016)).

76. *See id.* at 805-06.

77. *See generally Hodgen*, 87 F.3d.; *Graham v. Milky Way Barge, Inc.*, 824 F.2d 376 (5th Cir. 1987).

78. *Hodgen*, 87 F.3d at 1520.

79. *Grand Famous*, 45 F.4th at 806 (quoting *Hodgen*, 87 F.3d at 1520).

80. *See id.*

81. *See id.* at 806.

contrary.⁸² For example, TPC's expert, Captain Bridges, stated that "custom in the industry was to vet the financial stability of owners and operators and to ensure the vessel has an appropriate SMS [safety management system] in place."⁸³ The district court quoted Captain Bridges' opinions favorably, while stating that there are certainly reasons that time charterers should be bound by a duty to vet.⁸⁴ In light of the circumstances, the Fifth Circuit's declaration that there was "no indication" that *Grand Famous* and China Navigation altered the traditional allocation of responsibility by custom seems overly emphatic.⁸⁵ Even if the facts would ultimately be insufficient to support the custom theory, there was arguably a genuine issue of material fact that could withstand summary judgment and warranted recognition by the *Grand Famous* court.⁸⁶ Apart from delivering an unfavorable result to TPC, the Fifth Circuit's refusal to evaluate the *Hodgen* exception leaves such exception open for speculation and confusion as to how and when it applies.⁸⁷ *Grand Famous* will be unhelpful to lower courts and other circuits faced with similar circumstances.⁸⁸

The Fifth Circuit's approach in the noted case is an example of the long-recognized emphasis on the nature of the charter and the allocation of control inherent to a charter.⁸⁹ Though consistent with precedent and established maritime principles, the Fifth Circuit failed to consider the practical implications of its decision in *Grand Famous*. In considering form over the circumstances of this case, and in establishing a blanket rule

82. See Brief for Claimants-Appellants, *Grand Famous Shipping Ltd. v. Port of Houston Authority*, 574 F. Supp. 3d 438 (S.D. Tex. 2021) (No. 4:18-CV-04678), 2022 WL 810493.

83. *Id.* at 21-22.

84. *Grand Famous*, 574 F.Supp.3d at 446 ("In a vacuum, there are some cogent reasons to consider imposing a duty to vet on a time charterer. 'In admiralty, the particular duty required under any given circumstance can be gleaned from statute, custom, or the demands of reasonableness and prudence.' And parties might expect a prudent time charterer to investigate the chartered vessel.") (quoting *In re Frescati Shipping Co., Ltd.*, 718 F.3d 184, 211 (3d Cir. 2013)).

85. See *Grand Famous*, 45 F.4th at 806.

86. See Brief for Claimants-Appellants, *Grand Famous Shipping*, 574 F. Supp. 3d.

87. See *Grand Famous*, 45 F.4th at 806.

88. See generally *id.*

89. See *Etheridge v. Sub Sea Intern.*, 806 F. Supp. 598, 602 (E.D. La. 1992) ("The Court is tempted to interpret 'control' realistically; to formulate a concept of constructive control. These lift boats, after all, were not operating for the pleasure of the crew. They were dedicated to Odeco's economic goal and commercial mission. It was the customer, the charterer, who directed the crew about where to go and it was certainly the charterer's work that was done once the lift boats arrived at their designated destination. Such thinking, however intuitive, seems unacceptable under the decided cases because, instead, they draw their answer from the nature of the charter and the allocation of control inherent in a time or voyage charter. Most important, and ultimately determinative, then, is the fact that these charters were either time charters, voyage charters or some hybrid, but certainly not bareboat charters. Form carries the day.") (discussing the inability to find Jones Act seaman status due to the existence of a time charter).

which will preclude evaluation of case-specific circumstances in the future, the court has exonerated from liability those who, if not under a time charter, would be liable.⁹⁰ In the noted case, the court stated that the Fifth Circuit recognizes “a distinction between a time charterer’s potential liability under the time charter and independent tort liability which is not governed by the charter.”⁹¹ Yet, the *Grand Famous* analysis centers on the existence and scope of the time charter.⁹²

The Fifth Circuit’s decision will primarily have burdensome effects on innocent third parties.⁹³ Insolvent owners and subsidiaries who are responsible to a third party for some damage leave the injured party with no remedy, even if the time charterer knew of the owner’s deficiency when it executed the time charter.⁹⁴ Accordingly, a potential public policy problem exists in that time charterers may knowingly employ a grossly incompetent contractor in the comfort of knowing that they will not face consequences or even have to compensate a third party harmed as a result.⁹⁵ It could also incentivize owners to purposely insulate themselves from liability by inserting an unqualified and underfinanced middleman into the time charter.⁹⁶

V. CONCLUSION

In the noted case, the Fifth Circuit stayed consistent with the general trend of its jurisprudence, which indicates a reluctance to impose liability upon time charterers beyond what is traditionally imposed. By skipping the analysis of key legal components and declaring a blanket rule, the Fifth Circuit immunized time charterers. Though the ultimate answer reached by the Fifth Circuit is one that other courts likely could have

90. *See id.*; *see Grand Famous*, 45 F.4th.

91. *Grand Famous*, 45 F.4th at 806 (quoting *Graham v. Milky Way Barge, Inc.*, 824 F.2d 376, 388 (5th Cir. 1987)).

92. *See id.*

93. *See* Brief for Claimants-Appellants, *Grand Famous Shipping Ltd. v. Port of Houston Authority*, 574 F. Supp. 3d 438 (S.D. Tex. 2021) (No. 4:18-CV-04678), 2022 WL 810493.

94. *See id.*

95. *See* *Todd Shipyards Corp. v. Turbine Service, Inc.*, 674 F.2d 401, 411 (5th Cir. 1982) (refusing to absolve a party of liability due to a contract provision because it would be “so repugnant to common sense and public policy that it cannot stand. Such an interpretation would lead to the preposterous result that a contractor could relieve itself of all liability by subcontracting the work to a wholly incompetent subcontractor.”).

96. *See* Brief for Claimants-Appellants, *Grand Famous Shipping*, 574 F. Supp. 3d.

reached as well, its analysis, or lack thereof, makes its answer less convincing. Ultimately, the noted case embodies an emphasis on form over intuitive reasoning.

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