

## Shipping

### Ocean Victory, the safe port clause construed

**The dispute decided by the English Supreme Court clarifies about the notion of safe port, commonly contained in contracts for employment of vessels, as Studio Legale Garbarino Vergani explains**



A dispute decided by the Supreme Court with its decision n° 35 of 10th May 2017 clarifies how the notion of safe port, commonly contained in contracts for employment of vessels, must be construed under English law, as Studio Legale Garbarino Vergani explains.

The bulk carrier Ocean Victory was ordered by her Charterers to sail to the Japanese port of Kashima, where weather conditions marked by strong winds or long swells were common and well known. Notwithstanding, in the history of that port, the above mentioned weather conditions never occurred at the same time. It is exactly in consequence of such an extraordinary coincidence in time that the parties to the dispute at issue confronted themselves until the latest proceedings, arguing about the correct construction of the safe port notion.

Through the decision at issue the Supreme Court upheld that of the Court of Appeal, sharing the reasoning previously followed, in terms which we can summarize as follows. The moment when it must be considered and decided whether or not a port is safe according to the terms of the contract is at the time of nomination of the port. This must be done through a test of foreseeability. This test, however, must be carried out taking into account only circumstances ordinarily foreseeable.

The dispute was decided on grounds that two above mentioned weather conditions never occurred before at the same time. In the judgment it is said that such an event could be considered abnormal, thus not foreseeable; as a consequence, the port could be considered safe under the contract. The Supreme Court said that, to decide in general terms whether or not a port can be considered 'safe' under a contract, the question to be answered should be the following: would a reasonable shipowner, trading the vessel on his own account in the same conditions, sail to that port?

According to the Supreme Court, each time that the answer to this question would be "yes, unless an abnormal event occurs" it means that the nominated port can be considered as a "safe port" under the contract.