No. 09-222

In the Supreme Court of the United States

BECKY MATHENY, INDIVIDUALLY AND AS SURVIVING SPOUSE OF RONALD MATHENY, DECEASED, ET AL., PETITIONERS

v.

TENNESSEE VALLEY AUTHORITY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE TENNESSEE VALLEY AUTHORITY IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals erred in holding that the Limitation of Liability Act, 46 U.S.C. 30505, applies to a claim seeking damages from the Tennessee Valley Authority (TVA) for an accident caused by a momentary navigational error of a boat captain employed by the TVA.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes:

Miscellaneous:

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-22) is reported at 557 F.3d 311. The district court opinions finding liability and damages (Pet. App. 23-97) and revising the damages findings (Pet. App. 98-104) are reported at 523 F. Supp. 2d 697 and 247 F.R.D. 541.

JURISDICTION

The judgment of the court of appeals was entered on February 19, 2009. A petition for rehearing was denied on May 22, 2009 (Pet. App. 105-106). The petition for a writ of certiorari was filed on August 20, 2009. The

jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. The Tennessee Valley Authority (TVA) operates a coal-fired electric power generating plant on the south bank of the Cumberland River in northwest Tennessee. As part of its operations at the plant, TVA owns tugboats that are used to move coal barges along a short stretch of river to be unloaded at the plant and then returned empty for pickup by towing companies. Pet. App. 3.

b. At around 5:30 p.m. on June 5, 2005, petitioners Thomas Lawrence and Ronald Matheny went fishing in Lawrence's 14-foot boat in the portion of the river traversed by TVA tug boats. Later that evening, a boat captain employed by TVA, Captain Ralls, and his two person crew started their shift on one of the TVA tug boats, the *Patricia H*. At approximately 7:50 p.m., when the *Patricia H* traveled downstream to obtain a loaded barge, its wake swamped Lawrence's boat. Both Lawrence and Matheny were thrown overboard. The crew of the *Patricia H* was able to rescue Lawrence, but Matheny drowned. Pet. App. 3-4.

2. a. Petitioners filed this admiralty action in the United States District Court for the Middle District of Tennessee, seeking damages from TVA for Matheny's death and Lawrence's injuries. TVA defended the action by asserting, *inter alia*, the protections of the Limitation of Liability Act (Limitation Act), 46 U.S.C. 30505. That statute, which Congress recodified without substantive amendment in 2006, see H.R. Rep. No. 170, 109th Cong., 1st Sess. 2 (2005) provides that "the liability of the owner of a vessel" for "any act, matter, or

thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of the owner" shall "not exceed the value of the vessel and pending freight." 46 U.S.C. 30505. The Limitation Act thus alters the normal rules of vicarious liability and "allows a vessel owner to limit liability for damage or injury, occasioned without the owner's privity or knowledge, to the value of the vessel or the owner's interest in the vessel." *Lewis* v. *Lewis & Clark Marine, Inc.*, 531 U.S. 438, 446 (2001). On the basis of the Limitation Act, TVA contended that, even if it were held liable for the accident, its liability could not exceed $420,000, the stipulated value of the *Patricia H*. Pet. App. 3.

b. Following a four-day bench trial, the district court awarded petitioners damages of approximately $3.5 million. The court found that the accident was caused by the negligence of Captain Ralls, and in particular by his operation of the *Patricia H* at an excessive speed when passing Lawrence's fishing boat. Ralls's conduct, the court concluded, violated two Inland Navigational Rules, which are statutory "Rules of the Road" that apply to all vessels upon the inland waters of the United States. 33 U.S.C. 2001; Pet. App. 45; see *id*. at 6 (finding that Captain Ralls violated Inland Rule 2 (Responsibility), which states that "due regard shall be had to all dangers of navigation and collision," and Inland Rule 6 (Safe speed), stating that "[e]very vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions."). 33 U.S.C. 2002(b), 2006.

The district court also held that TVA was not entitled to the protections of the Limitation Act. The court found that "Captain Ralls had proved himself, up to the

time of the accident, to be a perfectly competent captain," Pet. App. 75; that he had been tested on the statutory "Rules of the Road" under the Inland Navigational Rules, "specifically regarding passing, crossing situations, risk of collision, safety, and good seamanship"; and that he had received training in collision avoidance, which Captain Ralls understood to include the wake of his boat hitting another, *id.* at 45. Despite these findings, the court reasoned that the TVA had failed to prove that it lacked "privity or knowledge of the risks posed by tugboats being operated too fast, creating potentially dangerous wakes for nearby fishing boats." *Id.* at 75. "[A]lthough TVA was aware of [such] risk," the court explained, "it did not take any steps to reduce" it by "informing its tugboat captains not to operate at a little to no wake speed when in the presence of fishing boats." *Id.* at 76; see *id.* at 82-86.

3. The court of appeals reversed the district court's ruling on the Limitation Act. The court concluded that, by focusing on TVA's "knowledge of the *risks* posed by Captain Ralls's negligent operation of the Patricia H at an excessive speed," the district court had incorrectly framed the inquiry. Pet. App. 9. "[T]he Limitation of Liability Act speaks in terms of *acts*, not *risks*," the court of appeals explained, and therefore the Act's protections do not disappear simply "because TVA was aware of the fact that *if* a tugboat operates at an excessive speed it *may* create a dangerous wake for nearby recreational boats." *Id.* at 10. The court reasoned that the dispositive question was instead whether TVA had "privity or knowledge" of "the specific negligent acts or unseaworthy conditions that actually caused or contributed to the accident." *Ibid.* (quoting *Suzuki of Orange*

Park, Inc. v. *Shubert*, 86 F.3d 1060, 1064 (11th Cir. 1996).

The court concluded that "[t]here is no evidence in this record to justify imputing knowledge to TVA about the specific conditions that led to" the swamping of Lawrence's boat. Pet. App. 10. The court noted that "it is well-settled that under the Limitation of Liability Act, 'an owner may rely on the navigational expertise of a competent ship's master.'" *Id.* at 11 (quoting *Gateway Tugs, Inc.* v. *American Commercial Lines*, (*In re Kristie Leigh Enters., Inc.*), 72 F.3d 479, 482 (5th Cir. 1996). Citing the district court's findings about Captain Ralls's experience, unblemished record, and knowledge of navigational rules, the court concluded that that principle controlled here. *Id.* at 11-12. The court thus held that "TVA was entitled to rely on a competent captain's navigational knowledge and cannot be deemed negligent because it failed to inform Captain Ralls or any of its other captains not to be negligent by creating excessive wakes near recreational boats." *Ibid.*; see *id.* at 19-21 (rejecting district court's conclusion that the Limitation Act did not apply to petitioners' "negligent supervision" theory of liability).

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or of another court of appeals. Further review is not warranted.

1. The court of appeals correctly concluded that the Limitation Act applies to petitioners' claims. As the court of appeals recognized, it is "well-settled" that a ship owner is entitled to the protections of the Limitation Act when it relies upon the navigational competence

of a skilled master and lacks actual knowledge of the specific negligent acts that resulted in the accident. Pet. App. 11. The district court found that Captain Ralls was a skilled and experienced tugboat operator, and there was no evidence or basis for finding that any managing agent of the TVA knew that, at the time of the accident, Captain Ralls was negligently operating the boat at excessive speeds. The decision below therefore represents a straightforward application of the Limitation Act. That factbound ruling does not merit this Court's attention.

2. There is no conflict among the courts of appeals on the Limitation Act's scope or meaning. Petitioners contend (Pet. 15-20) that the Fifth and Eighth Circuits would hold the Limitation Act inapplicable when the owner "was in a position to exert control" over the vessel, even if the evidence shows that the owner had no contemporaneous privity or knowledge of a momentary navigational error by a competent master. Pet. 16. That argument lacks merit. The law of the Fifth and Eighth Circuits is clear and consistent with the law applied in the decision below: under the Limitation Act, a vessel owner may rely on the navigational expertise of a competent captain when the owner is not on notice of any pattern of prior navigational errors. See *Omega Protein, Inc.* v. *Samson Contour Energy E & P LLC* (*In re Omega Protein, Inc.*), 548 F.3d 361, 371 (5th Cir. 2008) (finding the Limitation Act applicable and holding that "mere 'mistakes of navigation' by an otherwise competent crew do not bar limitation of liability") (quoting *Brister* v. *A.W.I., Inc.*, 946 F.2d 350, 356 (5th Cir. 1991)); *In re Kristie Leigh Enters., Inc.*, 72 F.3d 479 at 482 ("[T]he well established rule [is] that, for limitation purposes, an owner may rely on the navigational expertise

of a competent ship's master."); *In re American Milling Co.*, 409 F.3d 1005, 1019 (8th Cir. 2005) ("[S]pontaneous or momentary errors by competent pilots cannot be imputed to owners."); *Lawrenson* v. *Belterra Resort Indiana, LLC* (*In re MO Barge Lines, Inc.*), 360 F.3d 885, 891 (8th Cir. 2004) (holding the Limitation Act applicable because "[t]he record supports the district court's finding that Missouri Barge hired a licensed, competent operator to navigate its vessel on the Mississippi River * * * [and the plaintiff] produced no evidence showing that Missouri Barge could be charged with notice that [the captain] would operate the vessel negligently."). Contrary to petitioners' assertion, in circumstances where the owner lacks actual contemporaneous knowledge of a momentary navigational error and the vessel is being piloted by a competent master, the government is aware of no decision interpreting the Limitation Act to require a separate inquiry into whether the owner potentially could have exerted "control" over the ship and denying limitation on that basis.

Petitioner's assertion of a circuit conflict is based on footnotes in two decisions, *Continental Oil Co.* v. *Bonanza Corp.*, 706 F.2d 1365 (5th Cir. 1983), and *In re MO Barge Lines*, *supra.* But the statements in those footnotes do not purport to establish "requirement[s]" for application of the Limitation Act. Pet. 16. Rather, in each passage the court simply cited a treatise on admiralty law in observing that one of the rationales for limiting liability in negligent navigation situations is that, "when the owner is so far removed from the vessel that he can exert no control over the master's actions, he should not be taxed with the master's negligence." *Continental Oil*, 706 F.2d at 1377 n.15; see *In re MO Barge Lines*, 360 F.3d at 891 n.5. Neither court applied that

observation as a controlling legal standard. To the contrary, both courts proceeded under the same well established rule underlying the decision below: "[t]he owner's duty is essentially satisfied when he properly equips the vessel and selects competent crew to operate it." *Id.* at 891; see *Continental Oil*, 706 F.3d at 1377 n.15 (recognizing that "no court has previously denied a corporate shipowner limitation of liability for a master's navigational errors at sea when the owner has exercised reasonable care in selecting the master"). Based on that rule, the Eighth Circuit held the Limitation Act applicable. *In re MO Barge Lines*, 360 F.3d at 891. And although the Fifth Circuit held the Act inapplicable in *Continental Oil*, its decision rested on the fact that the negligent master was a managing agent of Bonanza, so that the master's "privity and knowledge was that of the corporation." *Continental Oil*, 706 F.2d at 1377. (Petitioners disavow any contention that Captain Ralls was a managing agent of TVA for purposes of limitation analysis. Pet. 18.) The Fifth Circuit has more recently confirmed its adherence to the "well established rule that, for limitation purposes, an owner may rely on the navigational expertise of a competent ship's master." *In re Kristie Leigh Enters., Inc.*, 72 F.3d at 482.[*]

[*] Petitioners also cite the Fifth Circuit's decision in *Hellenic Inc.* v. *Bridgeline Gas Distrib.* (*In re Hellenic*), 252 F.3d 391 (2001), in support of their position (Pet. 18), but it, too, is similarly inapposite. In that case, the corporate owner of a spud barge sought limitation after its "spudded down" barge was pushed by wind and seas into a gas pipeline, causing the pipeline to rupture. *In re Hellenic*, 252 F.3d at 393. The district court denied limitation because it found the construction superintendent, who had made the alleged negligent decisions to leave the barge unmanned and anchored only by its studs, to be a managing agent of the owner. On appeal, the Fifth Circuit held that the construction

2. There is no merit to petitioners' contention (Pet. 22) that, in rejecting the district court's "negligent supervision" basis for liability, the court of appeals contravened this Court's holding in *American Car & Foundry Co.* v. *Brassert*, 289 U.S. 261 (1933) (*American Car*). The decision in *American Car* is not implicated here. That case involved an effort by the *manufacturer* of a vessel to limit its liability for injuries sustained when the vessel exploded while being operated by the vessel's purchaser. The manufacturer had retained title of the vessel solely for the purpose of securing the unpaid portion of the vessel's purchase price. The manufacturer had no control over the vessel's operation, did not man or operate her, and had no right to do so; indeed, for all purposes of use in navigation, the vessel belonged to the purchaser. *Id.* at 264. In rejecting the manufacturer's effort to invoke the Limitation Act, this Court held that the statute protects only ship owners *qua* ship owners; the liability in *American Car* "arose, not because [the defendant] reserved title, * * * but because it was manufacturer and vendor." *Id.* at 265. Here, there is no dispute that the asserted liability of TVA arises in its capacity as the owner of the tugboat. The holding in *American Car* therefore does not apply.

The decision below correctly held that petitioners' allegation of "negligent supervision" did not render the Limitation Act inapplicable. As other courts of appeals (including the Fifth and Eighth Circuits) have held, a claimant cannot avoid limitation in a case such as this, involving a momentary navigational error, by alleging that the owner negligently supervised the compe-

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superintendent could not be considered a managing agent for limitation purposes and remanded for further proceedings.

tent master. See, *e.g.*, *In re Kristie Leigh Enters., Inc.*, 72 F.3d at 481-482 (reversing a district court decision holding that the owner "could not limit [liability] because it * * * did not provide better training and supervision," and concluding that because the record did not support a finding that the captain was incompetent, or that the owner was on notice of prior navigational errors by the captain indicating that the captain needed additional training or instruction, "the record presents no justification for departing from the well established rule that, for limitation purposes, an owner may rely on the navigational expertise of a competent ship's master."); *In re American Milling Co.*, 409 F.3d at 1020 (affirming limitation and rejecting contentions that towboat owner "failed to adequately train Captain Johnson and failed to take adequate steps to educate Captain Johnson concerning currents in the river"); *The G.K. Wentworth*, 67 F.2d 965, 966 (9th Cir. 1933) (finding limitation because the owner "had the right to rely upon the fact that this competent master would observe the rules of navigation, which he well knew").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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