

OW Bunker bankruptcy – update from the USA



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Shortly after OW Bunkers (OWB) in Denmark filed for bankruptcy in November 2014, OWB affiliates in the USA filed as well. As in England and Singapore, owners and time charterers in the USA who contracted with OWB and, in particular, OWB's US affiliates, faced the possibility of having to pay the value of the bunkers twice, once to OWB (or its bank, ING Bank) and once to the physical supplier. In the USA, however, owners and time charterers in New York have successfully used an interpleader action to avoid paying twice, for now: *UPT Pool Ltd v. Dynamic Oil Trading*.¹

Interpleader actions

Typically, an OWB entity contracts with an owner or time charterer to supply a given ship and then contracts with others 'down the chain' to make the actual supply in a given port to the given ship. In an attempt to avoid the risk of double payment, some owners and time charterers filed 'interpleader' actions in the federal court in New York. An interpleader action allows a person faced with more than one person demanding payment for the same debt to pay the amount due into the registry of the court and leave it to the court to decide which of the competing claimants should be paid. If the court finds that the interpleader action is proper, it may also enjoin the persons before it from attempting to collect the debt by filing actions elsewhere.

From December 2014 through to the spring of 2015, some 25 such interpleader actions were filed in New York and consolidated before Judge Valerie Caproni. The owners and time charterers posted security or funds representing the value of the bunkers, and also sought and obtained orders preventing the potential claimants (e.g. the physical suppliers, ING Bank and the OW entities) from arresting the subject ships anywhere else and, in some cases, from pursuing claims against the owners/charterers other than in the interpleader action.

Maritime lien

Under US law,² 'a person providing necessities to a vessel on the order of the owner or a person authorized by the owner has a maritime lien against the vessel'. The term 'necessaries' is broadly construed and bunkers are such 'necessaries'. The lien is a true maritime lien and survives the sale of a ship to a third party. The lien can also be enforced against the ship even when the lien holder does not have a contract with the owner. The Lien Act lists persons who are presumed to be authorised to procure bunkers on behalf of the ship and bind the ship to the lien, including the owner, the master, a person entrusted with the management of the ship at the port of supply, or an officer or agent appointed by the owner or a charterer.

Court decision

The physical suppliers raised various procedural and substantive objections, but primarily contended that the court lacked 'subject matter jurisdiction' to hear the dispute or to forbid them from arresting the ships, because the ships themselves were not physically in the district of New York. On 1 July 2015, Judge Caproni issued her decision, cited

above, holding that she did have 'subject matter jurisdiction' over the claims before her and that interpleader relief was appropriate at this stage. She thus upheld the injunctive orders that she had issued in the cases, maintaining the status quo.

It remains to be seen what relief will ultimately be granted in New York on a substantive basis, but at least for now, the owners and time charterers in the New York interpleader actions have obtained relief from the threats of arrest with respect to the bunker supply transactions at issue.³

Conclusion

While the New York court has indicated its willingness to bring all necessary

parties before the court in a single action and to decide the substantive issues, the ruling does not necessarily open the door for all other owners and time charterers affected by the OWB fallout to obtain relief in New York. The physical suppliers before Judge Caproni are subject to the court's personal jurisdiction and the bunker supplies in question occurred in the USA. The situation may be different in cases involving a foreign physical supplier which is not subject to, or has not consented to, US court jurisdiction.

Members who still face the threat of an OWB-related arrest should contact their usual claims executive to consider whether joining the New York action is advisable.



The author gratefully acknowledges the assistance of Gina Venezia, Partner, Freehill Hogan & Mahar, New York, in the preparation of this update.

¹ 2015 U.S. Dist. LEXIS 85950 (S.D.N.Y. July 1, 2015).

² Commercial Instruments and Maritime Liens Act, 46 U.S.C. 31342 (the Lien Act).

³ In addition to the 25 cases that were commenced as interpleader actions in New York, there are other cases in US jurisdictions, including Texas. Applications have been filed to transfer those cases to New York to be heard with the existing ones before Judge Caproni, but no rulings have yet been issued.