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OW Bunker – one year on

Clarity on ship owners' exposures and response?

White Paper Shipping Disputes
Conference

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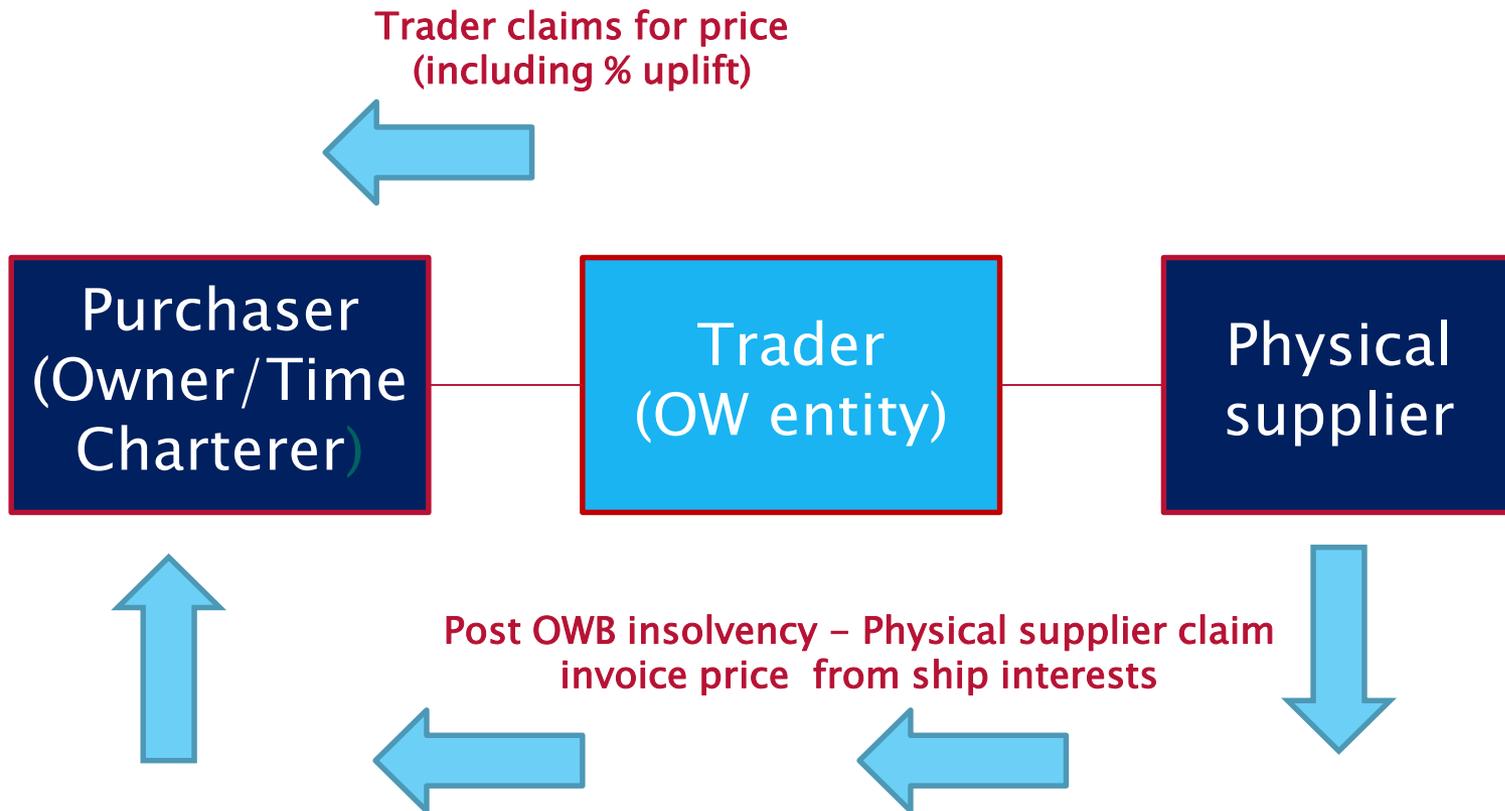


A clear direction for ship owners ?

OW Bunker– key facts

- 7% global marine fuel supply
- Operations in 29 countries
- Trading fraud – \$billion losses
- 7 November 2014 – Danish bankruptcy
- \$700 million credit facility
- ING Bank security agent
- PWC Receiver

Purchase chain



New crisis– old problem?

- Physical suppliers argue:
 - ROT reserves title
 - Invoice/BDR : Owner party to contract
 - Maritime Lien
- The Yuta Bondarovskaya [1997]
- The Fesco Angara [2011]
- Lien–friendly jurisdictions

Initial mitigation strategies

- Negotiate
- Letter of Indemnity
- Escrow agreement
- “Don’t pay once”!

“Res Cogitans” – one nil to OW/ING ?

- English law position on OW Terms
- CoA authority
- S.49 SoGA 1979 – claim for price
- Not a “sale” covered by the Act (no property transfer under s.2)
- Owner a bailee with licence to consume
- Simple claim for debt

The last word ?

- Supreme Court final say?
- Narrow point of law
- A deterrent to physical suppliers?
- Did Rosneft consent ?
- What if not all bunkers consumed?

Precious Shipping – Singapore

Supplier argument	Court view
ROT clause imposes obligation to account / OWB fiduciary agent	“A non starter” : ROT does not impose obligation to account /no fiduciary relationship
Tort of conversion– interference with possessory rights	Plain intention for the bunkers to be consumed for propulsion
Collateral contract –if OW fails to pay, then Owner will	“conjured out of thin air”
Unjust enrichment	Purchasers <u>have</u> agreed to pay – issue is whom pay
Maritime Lien	Not applicable in S’pore

Interpleader – the answer ?

- **Precious Shipping v OWB (Singapore)**
 - not permitted
- **Stena Bulk v Copley (Admiralty Court)**
 - permitted but effective?
- **UPT Pool v Dynamic Oil Trading (New York)**
 - effective but jurisdictional constraints
- **Canpotex & others v Marine Petrobulk (Canada)**
 - the “right” result / statute specific ?

Avoidance/mitigation steps (1)

- Clearer signposts
- No “one size fits all” solution
- Risk assess e.g. do vessels trade to US?
- Check ING assignment – is it valid under governing law?
- Better to pay pursuant to award or judgment?
- If vessel arrested, possible to convert proceedings to interpleader ?

Avoidance/mitigation steps (2)

- Back to basics – no intermediaries / on terms
- Receipt and waiver from contracting party and/or supplier
- Non-lien clause in C/P (e.g. BIMCO)
- Pre-order notice to Suppliers:

Take note that we, (Charterers: Name, address and contact details) are today (date) ordering (specification of) bunkers for supply at (port or place) on or about (date) on our account and our credit to MV/MT..... on charter to us and that the bunkers to be supplied to the Vessel are solely for our account as Charterers and that neither the Vessel, the Owners nor the Master is a party to the bunker supply contract and no lien, encumbrance or any rights shall arise on the Vessel.

Yours faithfully

Charterers of MV/MT.....

- Delivery Note stamp

This bunker supply is for account of vessel's time charterers, Messrs.....

I herewith declare that neither owners / bareboat charterers nor the vessel are responsible for payment of this supply and no lien or other claim against the vessel can therefore arise.



Discussion

Questions ?