



Inconsistent Results Seeking Interpleader Relief

The International Collapse of OW Bunker

By Christopher Scott D'Angelo and Robert E. O'Connor

In January 2014, Denmark's OW Bunker secured a \$700 million credit facility from an ING-led banking syndicate. Shortly after, Altor, a Norwegian private equity fund that owned OW Bunker, confirmed plans to float an IPO. OW Bunker, a marine fuel ("bunker") supplier that operated in 29 countries and claimed to have a 7 percent share of the global bunker market, announced increasing volume, revenue—nearly \$17 billion—and profit. When OW Bunker began trading on the NASDAQ OMX in March 2014, it was valued at \$980 million.

Six months later, as oil prices tumbled, OW Bunker posted a \$24.5 million loss for the third quarter. On November 6, 2014, OW Bunker suddenly commenced restructuring proceedings, allegedly after learning of a \$125 million fraud committed by employees at its Singapore-based subsidiary. Simultaneously, OW Bunker announced an unrelated \$150 million trading loss. OW Bunker's head of risk management was immediately dismissed; it reported two of its Singapore-based employees to Danish police; its shares were suspended from trading; and its banking syndicate withdrew the credit facility. A few days later, after it failed to secure a new credit facility or a buyer, a Danish court declared that OW Bunker was bankrupt.

The international maritime industry feared disruptions to normal bunker supplies at major ports as OW Bunker's subsidiaries, left to fend for themselves, considered their options. Amid speculation that OW Bunker would file for Chapter 15 bankruptcy protection in

the United States (it has not), OW Bunker's United States-based subsidiaries, O.W. Bunker Holding North America Inc., O.W. Bunker North America Inc., and O.W. Bunker USA Inc., filed Chapter 11 petitions in the U.S. Bankruptcy Court for the District of Connecticut. *In re O.W. Bunker Holding North America Inc.*, Case No. 14-51720 (JAM) (Bankr. D. Conn. filed Nov. 13, 2014).

Meanwhile, OW Bunker's customers received competing demands for payment from OW Bunker's creditors such as physical suppliers and ING. In a typical bunker supply transaction, OW Bunker would enter into contracts with customers to sell and to supply bunkers to vessels and separately enter into contracts with physical suppliers to deliver the bunkers to the vessels. At the time of OW Bunker's bankruptcy, many vessels already received and consumed bunkers sold and supplied by OW Bunker, but the physical suppliers had not yet been paid. Rather than exclusively pursue their claims in the bankruptcy proceedings, many physical suppliers began directly targeting vessels in "arrest" friendly jurisdictions where they might have enforceable maritime liens under certain circumstances. ING also sent demands to OW Bunker's customers, claiming that it was assigned the rights to collect OW Bunker's receivables. Reportedly, in the United Arab Emirates, a vessel's owner was forced to post security three separate times when faced with three competing claims—from a physical supplier, from ING, and from OW Bunker—arising from a single bunker supply.

To mitigate the risk of multiple payments, many vessel owners, and the vessels themselves, sought interpleader relief in various countries, but the results were inconsistent. In Singapore, for example, Precious Shipping (and more than a dozen other OW Bunker customers) sought interpleader relief from the High Court of Singapore. Precious accepted that it was obligated to pay for the bunkers but claimed that it was unable to decide which competing claimant to pay. Therefore, Precious sought to deposit an interpleader stake with the court and to obtain an order restraining the competing claimants from attempting to enforce their claims anywhere else in the world. The court, however, held that the "conditions precedent for interpleader relief were not satisfied since the competing claims of the physical suppliers neither disclosed any *prima facie* case for relief nor are

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they ‘adverse’ to [OW Bunker’s and ING’s] claims” and dismissed the interpleaders.

In the United States, more than 30 of OW Bunker’s customers sought interpleader relief. Most of the interpleaders were commenced or collected in federal district courts in New York and Houston, where, with a few exceptions, the district judges generally accepted the interpleader stakes into the district courts’ registries and issued orders restraining the competing claimants, including many foreign entities, from attempting to enforce their claims anywhere else in the world. One physical supplier, U.S. Oil, appealed to the U.S. Court of Appeals for the Second Circuit and argued that the district court did not have jurisdiction under the interpleader statute and furthermore, that the district court did not have the authority to issue worldwide restraining orders. The court of appeals, however, affirmed the district court’s jurisdiction under the interpleader statute, though it remanded to the district court for further analysis concerning the worldwide scope of the corresponding restraining orders.

OW Bunker-related bankruptcies, vessel arrests, interpleaders, arbitrations, investor lawsuits, and criminal proceedings—collectively estimated at more than 800 legal actions in more than 15 countries—are ongoing. Although a few of OW Bunker’s subsidiaries initially disputed ING’s claims that it was assigned the rights to collect OW Bunker’s receivables, many are now cooperating with ING to collect their receivables jointly. In December 2015, the U.S. Bankruptcy Court confirmed OW Bunker’s United States-based subsidiaries’ liquidation plans. And, in February 2016, a U.S. district court entered judgment in favor of a vessel after holding that a physical supplier, which delivered bunkers to the vessel but had not been paid by OW Bunker, did not have a maritime lien against the vessel under United States law. All of these developments provide some clarity in the wake of OW Bunker’s international collapse, but many of OW Bunker’s customers are still facing competing demands for payment. 