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13TH ANNUAL MEMBERS' MEETING

Foreign Bunkers Suppliers' Arrests in Israel Recent Developments



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Case No. 45897-02-12 O.W. BUNKERS MALTA LIMITED **v. M/V EMMANUEL TOMASOS**

- The Vessel's owners ordered bunkers from Mediterranean Bunker Services, which engaged the Plaintiff for the supply, and the latter engaged Wrist Worldwide Trading GmbH which engaged Stena Oil which was the physical supplier.
- The Owners paid MBS the bunkers consideration, but the latter became insolvent and did not pay the Plaintiff.
- The Plaintiff argued that it paid the bunkers consideration to Stena Oil which was merely a tanker carrying the bunkers on behalf of the Plaintiff and under its orders.
- The Plaintiff argued that as the supplier of the bunkers it holds a maritime lien over the Vessel, regardless of any payment made to MBS. Owners' position was that any cause of claim, including any possible maritime lien, may only stand in favor of MBS as the party with which the Owners had a contract with.



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- The Admiralty court found that the Plaintiff is merely a link in the chain of supply and the identity of the seller and buyer of the bunkers changed along the chain.
- Furthermore, the court dismissed the argument that Stena Oil was only a tanker delivering bunkers which belonged at the time of supply to the Plaintiff.
- The reasoning behind the Admiralty court's ruling was that under Israeli Law the maritime lien and the *in rem* cause of claim only stood to the "contracting party" with which the Vessel engaged in a supply contract, and not to any third parties who served as sub-suppliers or traders acting on behalf of the contracting party.

Case No. 22358-02-14 PRAXIS ENERGY GMBH v. M/V CAPTAIN HARRY

- The Plaintiff supplied bunkers to the Vessel at the port of Lome, Togo, via a sub-supplier named MONJASA, in accordance with an order placed by a time charterer of the Vessel named Denmar Chartering & Trading GmbH.
- The Owners lodged a claim at the Hamburg regional court for declaratory relief, to declare that it does not owe anything in respect of the bunkers supplied.
- During the legal proceedings held in Germany the Vessel arrived at Eilat, Israel, and the Plaintiff filed an *in rem* claim to the Admiralty court and inter alia arrested the Vessel.



Case No. 22358-02-14 PRAXIS ENERGY GMBH v. M/V CAPTAIN HARRY

- Prior to the conclusion of the legal proceedings in Israel, the Hamburg regional court granted the Owners the relief sought for, and declared that the Owners do not owe the Plaintiff any payment in respect of the bunkers supply. Furthermore, the Hamburg court ruled that the Plaintiff do not enjoy any maritime lien over the Vessel.
- Thereafter, the Owners filed a motion to dismiss the claim in Israel due to *res judicata* posed by the German ruling, which is currently pending before the Admiralty court of Haifa.



Case No. 17402-01-15 OIL MARKETING & TRADING INTERNATIONAL (EUROPE) S.A. v. M/V MILAN TRADER

- The chain of supply in this case was more complicated than the previous ones: the Vessel's managers ordered bunkers of O.W. BUNKERS (UK), which engaged in a supply contract with O.W. BUNKERS (SPAIN), which ordered the bunkers from the Plaintiff which appeared to be the physical supplier.
- After the supply of bunkers, O.W. Group entered into an agreement with its creditors, in which it assigned its rights and receivables to ING Bank as a security agent.



Case No. 17402-01-15 OIL MARKETING & TRADING INTERNATIONAL (EUROPE) S.A. v. M/V MILAN TRADER

- The chain of supply in this case was that the Vessel's managers ordered bunkers of O.W. BUNKERS (UK), which engaged in a supply contract with O.W. BUNKERS (SPAIN), which ordered the bunkers from the Plaintiff which appeared to be the physical supplier.
- O.W. Group entered into an agreement with its creditors, in which it assigned its rights and receivables to ING Bank as a security agent.
- The Vessel's managers received contradicting demands for payment of the bunkers supplied - from the Banks' representatives as well as from the Plaintiff.
- The Bank's representatives warned the Vessel's managers that any payments made to the physical suppliers does not extinguish the liability to pay the bunkers consideration to the Bank.



The prevailing legal policy, Conflicts & Developments

- The suppliers arresting vessels in Israeli often confuse - intentionally or not - the jurisdiction rules and the rules according to which the material rights of the parties are determined.
- The prevailing law in Israel allows for arrest of vessels due to necessities supplied, however, according to a Supreme Court ruling of 1987 (case No. 352/87 [NADIA S]) the assertion of rights or maritime lien the suppliers poses, is adjudged according to the *lex casus* which differs in each case.



The prevailing legal policy, Conflicts & Developments

- The presumption of equality of laws and rules according to the *lex fori*.
- According to the Israeli Shipping Law (Vessels) - 1960, the supplier enjoys a maritime lien over a vessel only if it is the contractual supplier from which the vessel ordered the bunkers.
- This position does not assist suppliers which do not have a clear and binding contract with the vessel, even if they are the physical supplier which delivered the bunkers.
- This status leads to what seems a never-ending conflict between suppliers and owners, and to a position of the suppliers that the relevant acts which grants them maritime liens for bunkers supply are the 1840 and 1861 Admiralty Courts Acts which were inherited of the British Mandate which governed Israel from WW I and until 1948, and are in force until today.

The prevailing legal policy, Conflicts & Developments

- The Admiralty court is of different views than that of the suppliers, and it often reminds them that the old English acts are only relevant to establish jurisdiction and arrest of vessels, whereas the material rights and maritime lien questions are ruled under other set of rules.
- The recent ruling of the court suggests that only the contractual supplier with which the vessel has a valid contract with enjoys a maritime lien.
- This position seems to align with the general notion that it is impossible for owners to conduct business if more than one link in the chain of supply is deemed to hold a maritime lien.
- This position is put to the test in the case of the Milan Trader, and the court will have to focus on the question who is the contractual supplier. If the claim is dismissed, theoretically (for the time being) no payment was made for the bunkers.

The prevailing legal policy, Conflicts & Developments

- The physical supplier often demands the vessel's signature on the delivery note as a pre-condition to the supply.
- The bunker delivery note often refers the parties to terms & condition governing the supply, which often contain a clause that the supply grants a maritime lien.
- The court may find that the bunker delivery note is merely a document proving the actual delivery and does not evidence the existence of a contract with the physical supplier.
- It is our view that even if the parties agreed that the supplier has a maritime lien same is only possible and enforceable if the supplier is entitled to such lien under the governing law.

Israel's Supreme Court



