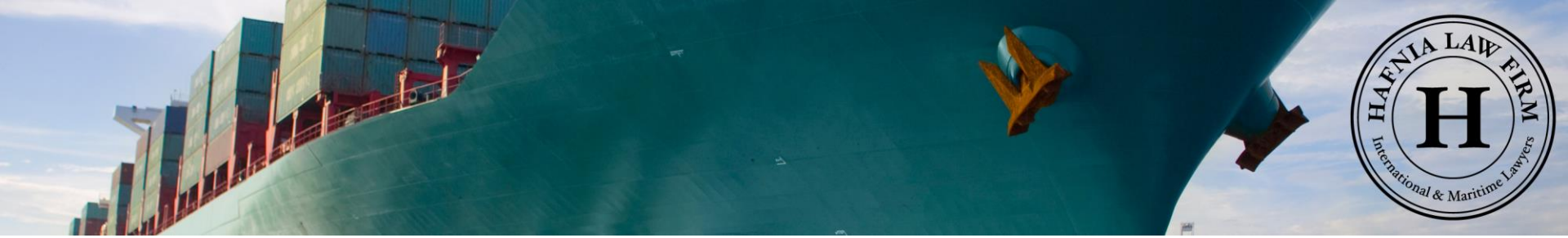




Recovery of the unpaid OW Bunker invoices

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Topics

- Background
- Financing setup
- The Fear of Double payment
- Trader debts



Background – OW Bunker

- Among the world's largest suppliers of bunker fuel;
- Subsidiaries in 29 countries on five continents;
- 2013 turnover of USD 17bn;
- Publically listed in April 2014;
- Files for bankruptcy on 7 November 2014
 - Risk management losses
 - Alleged fraud in subsidiary



OW Bunker – Status at Time of Bankruptcy

- **Liabilities** in excess of **USD 1bn**;
- **Assets** in excess of **USD 1bn**;
- Assets mainly consisted of **account receivables** for bunker supplies sold on 30 day credit;
- Shareholders and creditors are holding management, employees, investment banks and previous shareholders liable for their losses.



OW Bunker – Financing Setup

- Security Agreement of 19 December 2013;
- Syndicate of lenders with ING Bank as security agent;
- Supply receivables assigned to the security agent;
- Partners with PwC appointed receivers by the security agent;
- Cooperation agreements with estates;

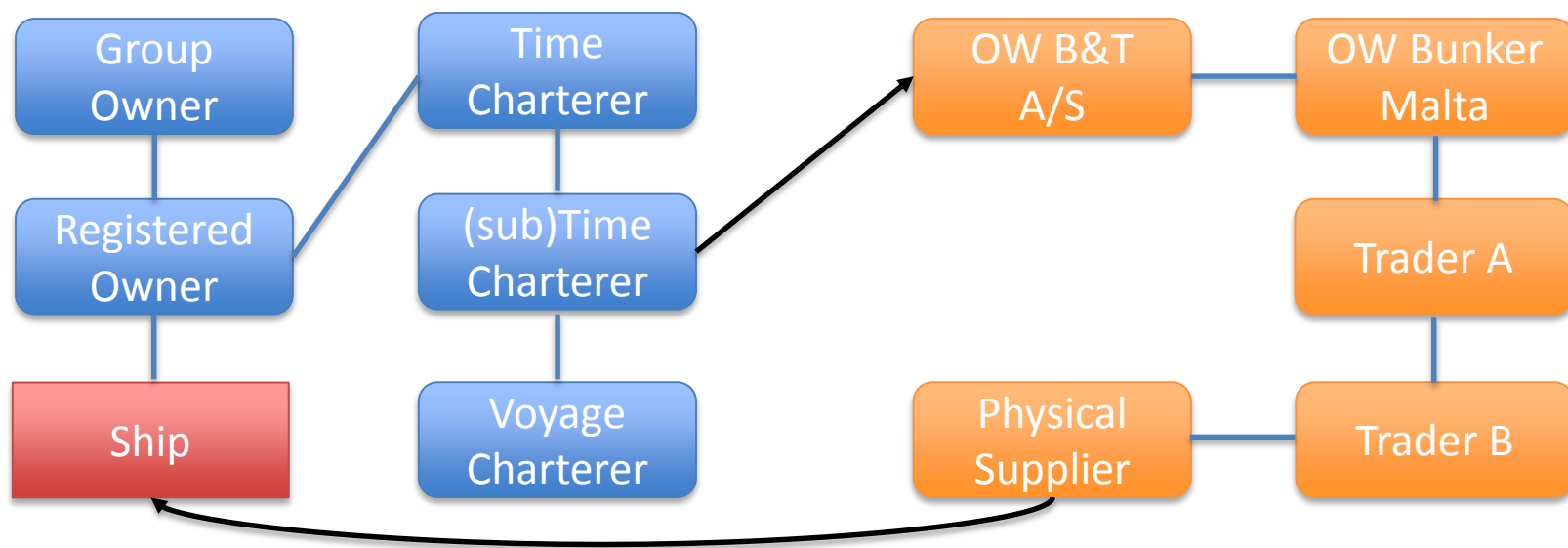


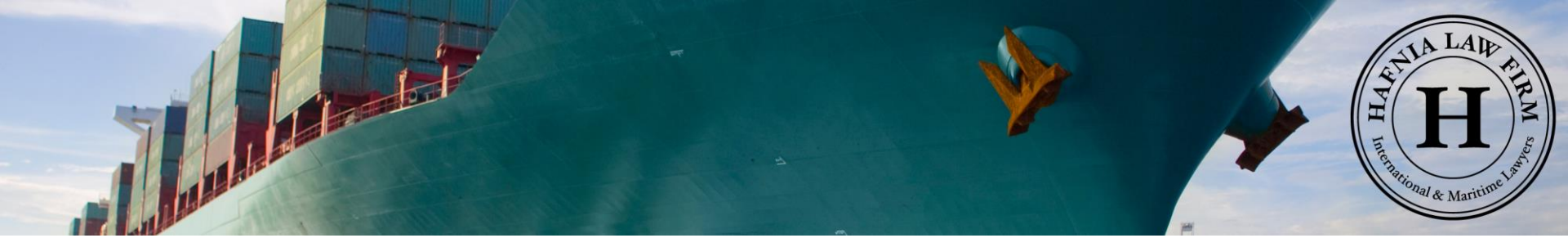
The Position of the Customers

- Pressured by continuous **shipping crisis**;
- Uncertainty allows for de facto **extension of credit**;
- Fear of **double payment** to physical suppliers;
- P&I Clubs and others advised OWB customers **against** paying anyone;



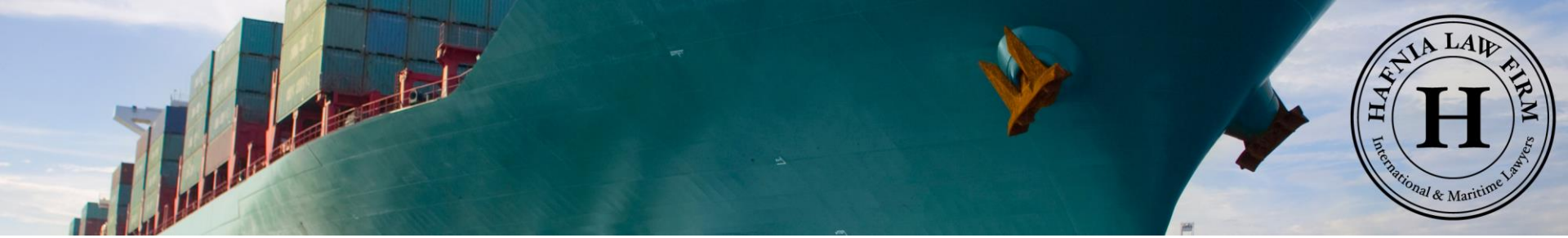
Typical Bunkering Setup





The Fear of Double Payment

- Certain jurisdictions grant unpaid physical suppliers rights directly against the receiving vessel
 - Retention of title?
 - Statutory maritime lien?
 - Contractual relationship?
- **However**, the customer's lack of payment (to anyone) is typically a requirement for the right of the physical supplier to arrest!



The Fear of Double Payment

- **Would the customers have been better off by paying the security agent?**
- Decrease in places where physical suppliers could arrest;
- Regardless of payment to the security agent, physical suppliers would arrest if allowed;
- Regardless of payment to physical suppliers, the security agent would arrest if allowed;



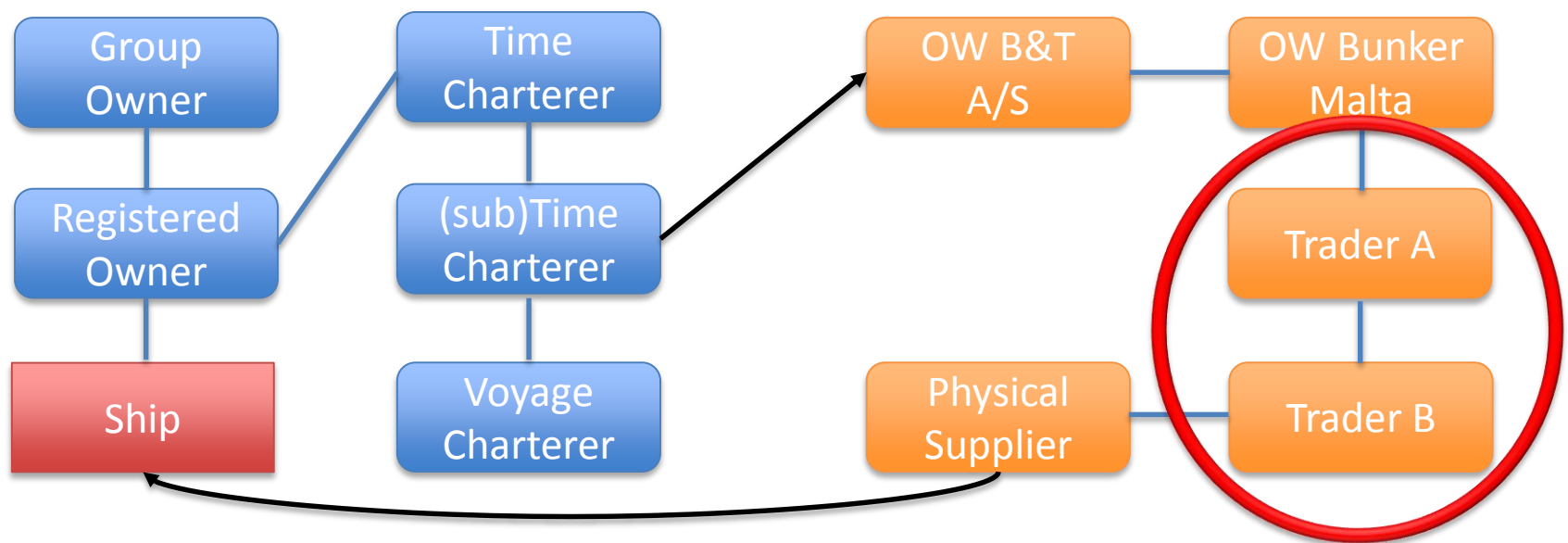
The Fear of Double Payment

Conclusion

- In retrospect, many vessels would not have been arrested by physical suppliers, if the customers had paid the security agent;
- Today, many customers would have been better off, if they had been advised to **act** instead of **wait**;
- Sometimes the *safest* choice is in reality the *riskiest*.



Trader Debt

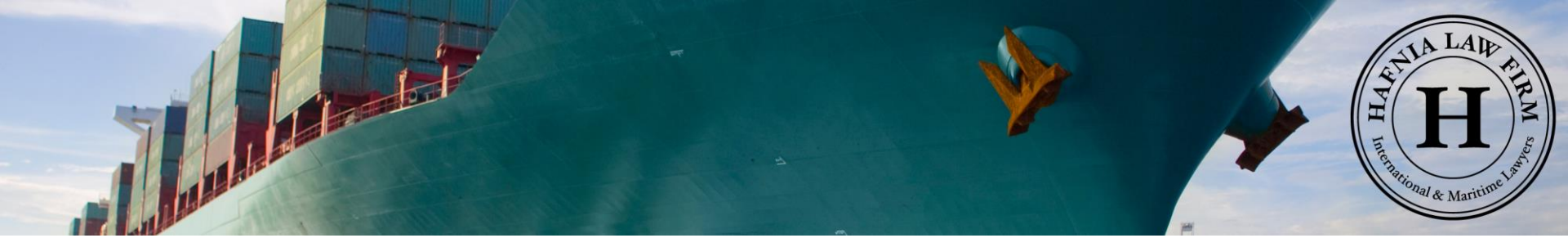




Bunker Trader Debt

Characteristics:

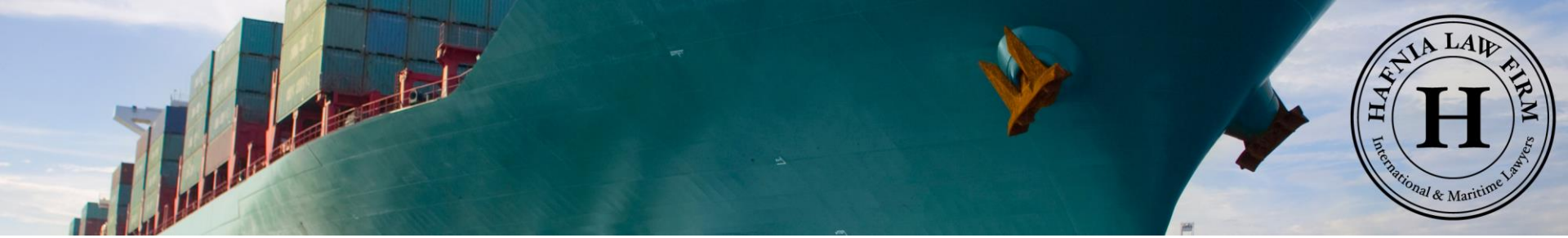
- Debt related to supply of bunker fuel;
- The seller is not the physical supplier;
- The buyer is not the owner/manager/charterer or anyone else involved with the operation of the vessel;
- Both parties are "pure" bunker traders;



Bunker Trader Debt

Reasons for non-payment

- Bankruptcy;
- Alleged counterclaims;



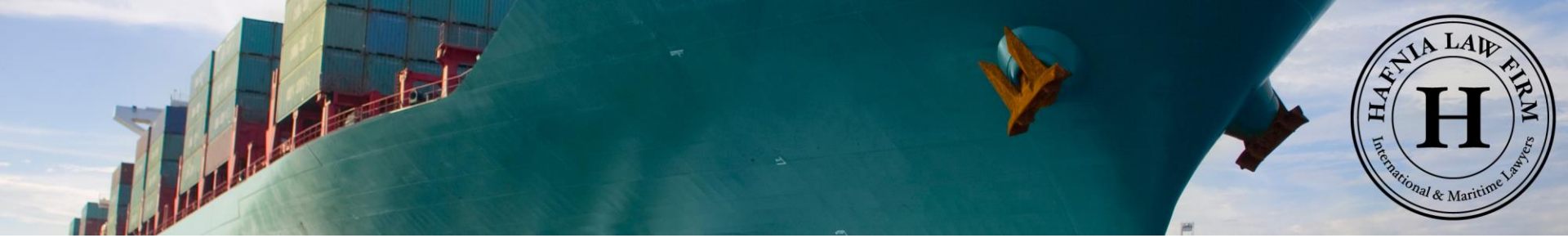
Trader Debt – Arrest Conventions

- 1952 Arrest Convention does not directly deal with this situation;
- Article 3 (4) explicitly mentions situations where the charterer of demise is liable;
- It is thereby implied, that only where the owner or demise charterer is liable may the ship be arrested (and not when a trader liable).



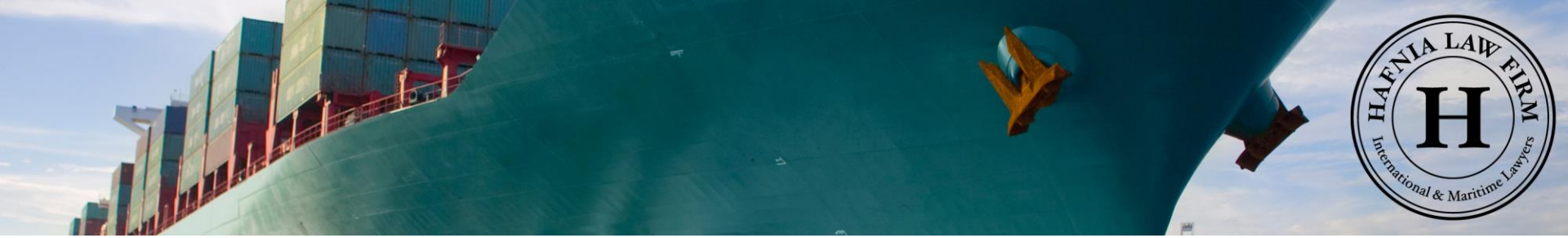
Arrest for Trader Debt – Contractual Approach

- Bunker sales contracts strongly favour the seller;
- The definition of the buyer is usually very broad;
- The terms and conditions of sub-suppliers are sometimes incorporated into the contract;
- This may allow an unpaid trader to rely on the same rights as the seller to the vessel;



Arrest for Trader Debts

- Possible in certain jurisdictions;
- Relevant when one bunker trader does not pay the other;
- Will most likely require that the vessel has not paid anyone;
- Can probably not be based on the rules of the 1952 Arrest Convention;
- May be based on contractual rights in the chain of traders;
- Is it fair?



THANK YOU

Questions?