
Litigating the OW Bankruptcy

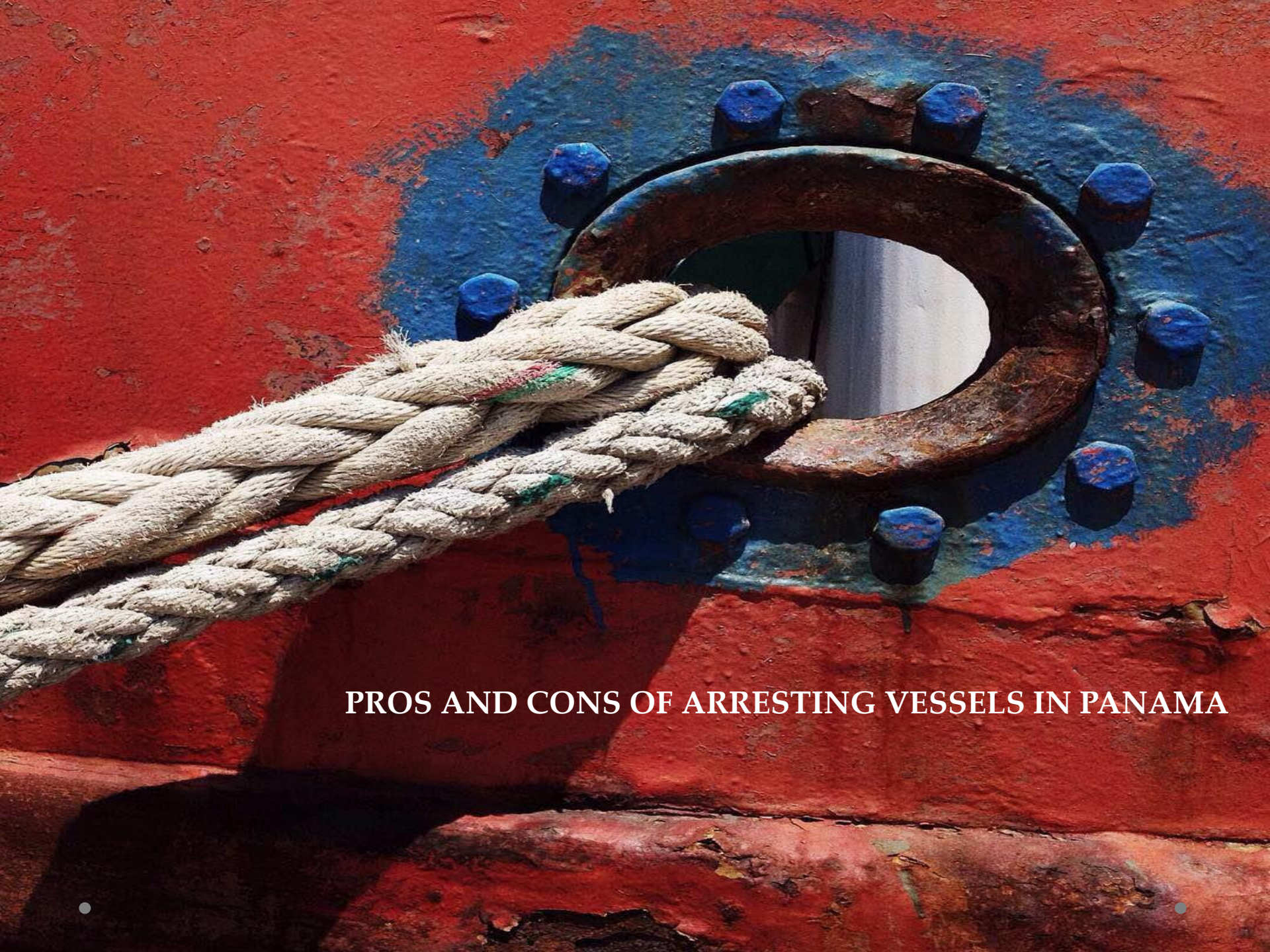


March 4th 2016
Ship Arrested Conference
Singapore

Route Log

1. Pros & Cons of arresting at the Panama Canal

1. Case *in re* MV GRACE ONE



PROS AND CONS OF ARRESTING VESSELS IN PANAMA

Legal frame for arrests – Article 166 CMP

- 1. Arrest of property of defendant to execute maritime liens – low bond**
- 1. Arrest of property of defendant to ascribe jurisdiction to the PMC when defendant is outside the jurisdiction of the Courts [*i.e.* Fuel Arrest claim against charterer] – nominal bond**
- 1. Arrest of property of defendant to avoid the process from being illusory in its effects by securing arrest over assets to secure the full satisfaction of creditors – high bond [20-30% of sum claimed]**

- ★ Plaintiff can apply for injunctive relief to avoid vessel owner to change ownership and/or sell vessel – high bond (USD 10,000 – 50,000 discretionary by judge)
- ★ Arrests can be made as security for a foreign proceeding – defendant has to ask for removal.
- ★ Low risk of owner avoiding arrest due to the reliable information provided by the Marine Traffic Office of the Panama Canal Administration – which is confidential, and ISPS compliant.
- ★ Arrest orders can be appealed one time to the Maritime Appellate Court.
- ★ Judge only requires by law to issue an arrest *prima facie* evidence of a 'winnable claim' – no requirement of documental formalities at arrest stage.

- ★ Arrest applications are filed concurrently with underlying claims.
- ★ The claims are verified initially by Judge with due regards to the Substantive Law Applicable to the claim.
- ★ Conflict law is Article 566 of the CMP. It contemplates 17 hypothetical claims and the respective choice of law.
- ★ 6 scenarios mandate judge to use COL unless there is an “express agreement to the contrary.”
- ★ Article 566.
 - 13. In regards to the effects of contracts of services provided to the vessel or cargo *and* contracts for supplies, unless there is an “**express agreement to the contrary**” the laws of the flag of the vessel apply to underlying claim.

Keep this
**The MARITIME COURTS OF
PANAMA**

13,874 TRANSITS in 2015

**JUDGES HAVE RESPECTED
CHOICE OF LAW CLAUSES IN
BUNKER SUPPLY TAC'S**

FAST

DOLARIZED

OPEN 365 DAYS A YEAR

The Cons

- ★ Briefs in litigation in spanish
- ★ Documental formalities – POA, Affidavits need Apostille
- ★ Owners' bond to lift arrest are stuck in Court until there is a final decision by the CA.
- ★ LOU's are accepted by agreement.



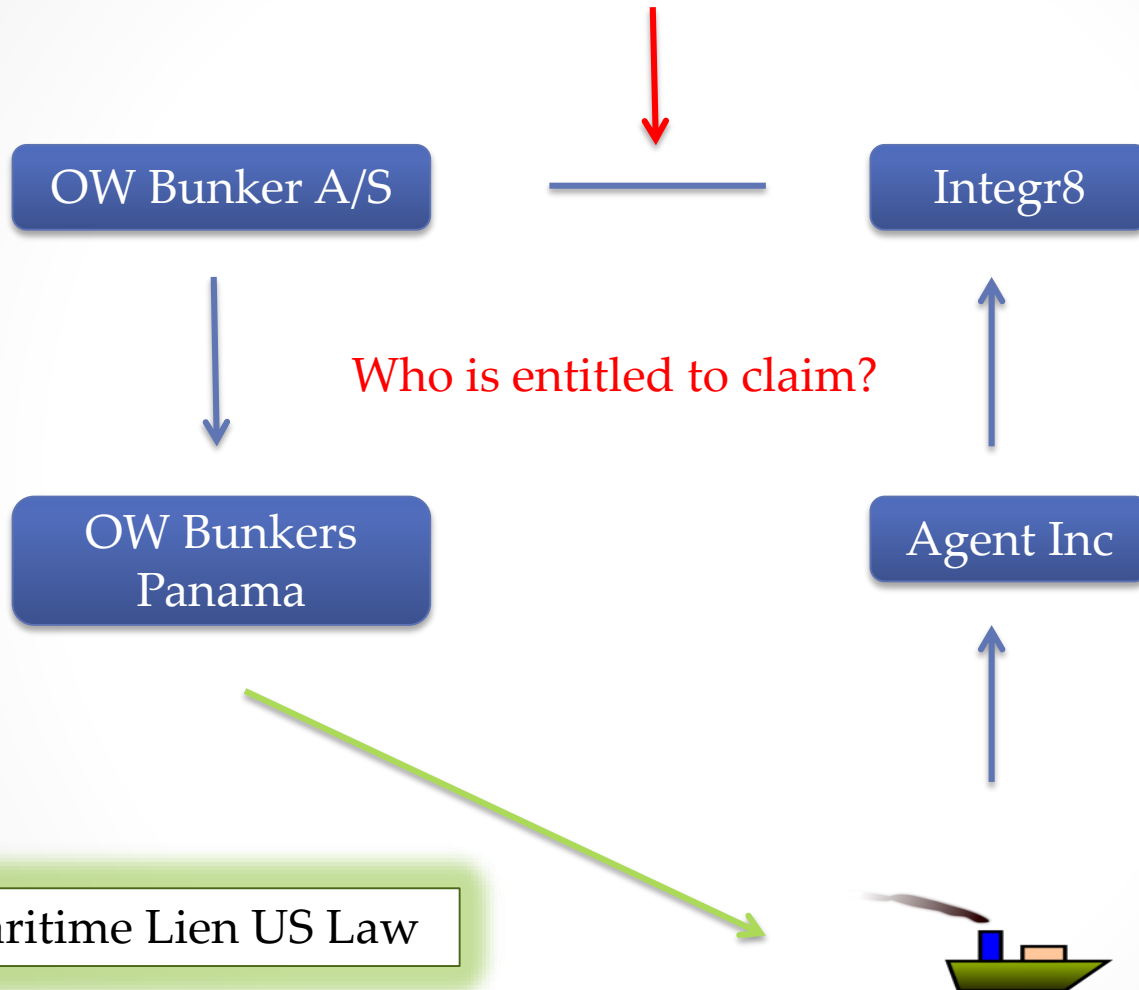
Wrongful arrest risk is low because it is common practice litigators allow for transit under arrest, thus transit time allows parties to acquire relevant documentation on board the vessel and proceed to release vessel in case arrest is not within procedural rules.

Transit waiting time is usually somewhere between 36-48 hours – we are working on this one!



Panama's contribution to the Global Litigation of the
OW Bankruptcy – *in re* MV GRACE ONE

1. Contractual Claim



O.W. Bunker Panama, S.A.
RUC: 1514888-1-650354 DV 6



Integr8 Fuels Inc
Trust Company Complex
Ajeltake Road, Ajeltake Island
MH-96963 Majuro
Marshall Islands
Mr. Phil Silbereisen

Albrook Office Center, 5th Fl., Suite #17
Diego Dominguez Street, Ancon
Panama
Tel: + 507 232 0219
Fax: + 507 232 0387
Email: panama@owbunker.com
Reg: 1514888-1-650354
ING Bank N.V.
IBAN: NL26 INGB 0020 1180 31
IBAN: NL10 INGB 0651 3696 81
SWIFT: INGBNL2A
IBAN: NL26 INGB 0020 1180 31
SWIFT: INGBNL2A

Panama 27. October 2014

Sales Order Confirmation

Sales Order No. 147-12371

We are hereby pleased to acknowledge receipt of your order as follows:

Vessel GRACE ONE (IMO: 9216640)
Port BALBOA
Delivery date Between 24. October 2014 and 31. October 2014
Seller O.W. Bunker Panama

Your ref.

Account MASTER AND/OR OWNER AND/OR CHARTERERS
AND/OR MV GRACE ONE
AND/OR INTEGR8 FUELS INC

Quantity	Unit	Product / Quality	Curr	Price	Unit	Supplier
1.000,00-1.200,00	MT	Fueloil 380-CST 3,5%	USD	470,00	MT	O.W. Bunker Panama
700,00	MT	Barging	USD	2,60	MT	O.W. Bunker Panama
1,00	LPS	Fuel Surcharge	USD	750,00	LPS	O.W. Bunker Panama
1,00	LPS	Overtime - if applicable	USD	250,00	LPS	O.W. Bunker Panama
7.630,00	BBLS	Pipelinefee	USD	0,50	LPS	O.W. Bunker Panama
7.630,00	BBLS	Pollution fee	USD	0,05	LPS	O.W. Bunker Panama
1,00	MT	Barging	USD	7.500,00	MT	O.W. Bunker Panama

Agent

Payment WITHIN 30 DAYS FROM DATE OF DELIVERY UPON PRESENTATION OF INVOICE
(ORIGINAL/TELEX/FAX). COPY OF DELIVERY RECEIPT WILL BE FORWARDED WHEN WE HAVE
RECEIVED SAME.

Remarks FIRST COME FIRST SERVE BASIS
1) Barging: 000 - 500 MT US\$ 7.500.00 thereafter US\$ 2.60 per MT
2) Pipeline fee: US\$ 0.50 per gross barrel, minimum \$750.00
3) Pollution fee: US\$ 0.05 per gross barrel
4) Overtime \$250.00 L/S, when applicable
5) Fuel surcharge US\$ 750.00 L/S

O.W. Bunker Panama, S.A.
RUC: 1514888-1-650354 DV 6



We thank you for this nomination.

Kind Regards

Ann Vestergaard Fyrst

Direct +1 203 658 8866

Mobile +1 203 524 3832

Yahoo ID anve_owsupply

E-Mail anve@owbunker.com

Office E-Mail panama@owbunker.com

TERMS AND CONDITIONS.

SAMPLES:

Measuring and sampling to be done at barge/tanktruck/shoreside manifold, and receiving Vessels crew is requested to witness and verify the measuring of quantity and the drawing and sealing of samples. These verified quantities as noted in the BDR as well as these samples taken are the only ones deemed representative, and any dispute regarding quality to be settled by testing these retained samples by an independent laboratory at port/place of delivery, and result of this testing is deemed to be final and binding for both parties.

TERMS:

The sale and delivery of the marine fuels described above are subject to the OW Bunker Group's Terms and Conditions of sale(s) for Marine Bunkers. The acceptance of the marine bunkers by the vessel named above shall be deemed to constitute acceptance of the said general terms applicable to you as 'Buyer' and to O.W. Bunker Panama as 'Seller'.

The fixed terms and conditions are well known to you and remain in your possession. If this is not the case, the terms can be found under the web address:
http://owbunker.com/wp-content/uploads/2013/12/OWB_GTC_ValidFrom01092013.pdf

GUIDELINES FOR RECEIVING BUNKERS:

We strongly urge you to forward the information regarding: General Instructions and Guidelines for Bunkering, for Receiving Vessels, on page 3, soonest possible to your Chief Engineer onboard. Following the suggested Guidelines should minimize risk of quantity disputes. Please bear in mind that barge figures are the sole valid quantity determination, wherefore Chief Engineer's attendance onboard the barge is extremely important.

OTHERWISE:

Any errors or omissions in above Confirmation should be reported immediately.

PLEASE INFORM US BY RETURN IF ABOVE NOMINATION DETAILS ARE NOT IN ACCORDANCE WITH YOUR UNDERSTANDING.

generality of the foregoing the Seller is hereby authorised by the Buyer in the absolute discretion of the Seller, but at the expense of the Buyer, to take such measures and incur such expenses (whether by employing its own resources or by contraction with others) as are necessary in the judgment of the Seller to remove the spilled Bunkers and mitigate the effects of such spill. The Buyer shall cooperate and render such assistance as is required by the Seller in the course of the action. All expenses, claims, costs, losses, damages, liability and penalties arising from spills shall be borne by the party that caused the spill by a negligent act or omission. If both parties have acted negligently, all expenses, claims, losses, damages, liability and penalties, shall be divided between the parties in accordance with the respective degree of negligence. The burden of proof to show the Seller's negligence shall be on the Buyer. The Buyer shall give the Seller all documents and other information concerning any spill or any programme for the prevention thereof that is required by the Seller, or is required by law or regulation applicable at the time and place of delivery.

O. DELAYS AND CANCELLATIONS

- O.1 Notwithstanding anything else to the contrary herein, and without prejudice to any rights or remedies otherwise available to the Seller, the Buyer, by its acceptance of these conditions, expressly agrees that Seller has the sole discretion to cancel or to adjust prices in the event the Vessel is suffering a delay exceeding 24 hours from the (last) nomination date.
- O.2 If the Buyer for whatever reason (including circumstances entirely outside Buyer's control) cancels the Agreement, where Order Confirmation has been sent by Seller, the Buyer shall be liable for any and all losses suffered and liabilities incurred by the Seller and/or the Supplier as a result of such cancellation, including, but not limited to, barge costs, re-storing of the Bunkers, and hedging costs, and also in Seller's sole option any difference between the contract price of the undelivered product and the amount received by the Seller upon resale to another party or, if another buyer cannot be found, any market diminution in the value of the product as reasonably determined from available market indexes. These losses and liabilities shall be indemnified by a minimum amount of USD 4,000 by way of agreed minimum liquidated damages, and shall be indemnified in full if they in total exceed USD 4,000.

P. LAW AND JURISDICTION

- P.1 This Agreement shall be governed and construed in accordance with English law. The 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. Except for circumstance referred to in Clause P.5 below all disputes arising in connection with this Agreement or any agreement relating hereto, save where the Seller decides otherwise in its sole discretion, shall be finally settled by arbitration in London, England in accordance with the Arbitration Act 1996 (or any subsequent amendment).
- P.2 In the event that the Seller determines to refer any dispute to arbitration it shall be referred to a tribunal of three arbitrators consisting of one arbitrator to be appointed by the Seller, one by the Buyer, and one by the two arbitrators already appointed. Each member of the tribunal shall be a full member of The London Maritime Arbitrators Association (the "LLMA"). Either party may call for Arbitration by service of written notice, specifying the name and address of the arbitrator appointed and a brief description of the dispute(s) or difference(s) to be the subject of the Arbitration. If the other party does not within 14 days serve notice of appointment of an arbitrator to arbitrate the dispute(s) or difference(s), then the first moving party shall have the right without further notice to appoint its own arbitrator as sole arbitrator and shall subsequently advise the other party accordingly. The award of the sole arbitrator shall be binding on both parties as if he had been appointed by agreement. Provided each party appointed their own arbitrator then these two arbitrators shall jointly appoint the third arbitrator. In the event that the two arbitrators fail to appoint a third arbitrator within twenty days of the appointment of the second arbitrator, either party may apply to the English courts for the appointment of a third arbitrator. Any disputes to be referred to Arbitration are to be determined in accordance with the current LMAA terms unless the parties agree otherwise.
- P.3 Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.
- P.4 In cases where neither the claim nor any counterclaim exceeds the amount of USD 100,000 (or such other sum as the parties may agree) the Arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.
- P.5 The General Maritime Law of the United States shall always apply with respect to the existence of a maritime lien, regardless of the country in which Seller takes legal action. Seller shall be entitled to assert

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Terms P1 – P5 are they ‘Ambiguous’ ?

The “Ambiguity” Argument? Ney.

Defendant argues TAC's are ambiguous because contract is subject to UK Law (**except for Liens which are subject to US Law.**)

Plaintiff counter argues there is no ambiguity.

(The terms and conditions of OW BUNKER, specifically P.5 clause, clarifies that cases involving the execution of maritime liens, the law applicable is the US law).

Court finds there is no ambiguity, contract clearly is subjected to US Law when it comes to right to maritime lien.

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Negotiation v Opportunity?

Defendant argued vessel did not negotiate any of the contracts

Court found that vessel did have the opportunity to negotiate specific points in the TAC's. The former states that "Buyer must 1.) inform of any errors or omissions in the sale, and 2.) inform if the details of the nomination are not what buyer understands them to be." Since there was no evidence customer informed of any of the above they cannot argue there was no negotiation.

Does “bunker trader or broker” defeat the Lien under US Law?

<p>Defendant argues 1.) no lien under US law because Integr8 acted a mere bunker trader with no control over the commercial disposition over the vessel, and</p> <p>2.) US General Maritime Law does not include CIMLA.</p>	<p>Plaintiff argues 1.) Integr8 acted as a broker who serves to connect buyers with suppliers, and</p> <p>2.) Reference to General Maritime Lien Law encompasses the specific rules of law that govern lien law in the US.</p>	<p>Court finds 1.) Integr8 acted as a broker, a mere intermediary and BDR + Bunker Requisition Form stamped by Chief Engineer make the vessel the buyer. Furthermore finds, if BDR is stamped with a stamp reading “BUNKERS SUPPLIED ON ACCOUNT OF CHARTERERS SOLELY.” contract was performed by the charterer.</p> <p>2.) Court establishes that choice of law of a foreign country entails all the constitutional, legal, regulations and treaties ratified by that country. thus a reference to GML includes CIMLA.</p>
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O.W. Bunker Panama, S.A.
RUC: 1514888-1-650354 DV 6



Albrook Office Center, 5th Fl., Suite #17
Diego Dominguez Street, Ancon
Panama
Tel: + 507 232 0219
Fax: + 507 232 0387
Email: panama@owbunker.com
Reg: 1514888-1-650354
ING Bank N.V.
IBAN: NL26 INGB 0020 1180 31
IBAN: NL10 INGB 0651 3696 81
SWIFT: INGBNL2A
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SWIFT: INGBNL2A

Panama 27. October 2014

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Seller O.W. Bunker Panama

Your ref.

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AND/OR MV GRACE ONE
AND/OR INTEGR8 FUELS INC

Quantity	Unit	Product / Quality	Curr	Price	Unit	Supplier
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Broker?

Intermediary?

Contractual Claim



OW Bunker A/S

Integr8



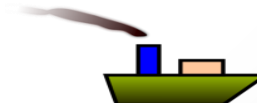
OW Bunkers
Panama



Agent Inc



Maritime Lien US Law



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O.W. Bunker Panama S.A.

5282 Calle Luis Uribe
Diablo Heights
Ancon
Panama



Nº 001469

Bunker delivery receipt

Delivery date: 30 OCT 2014
Receiving vessel: Grace One
IMO number: 92116640
Flag: Liberia
Port/location: Balboa
Bound for: Panama Canal
Delivered by: STAR Goethals

Alongside: 0120
Hose connected: 0220
Commenced bunkering: 08.50
Cor: 264847
Hos: 264849
Dep: 264848
264850

Description Product delivered	Gross bbis
IFO 380	6786.692

	Fuel Oil
Kinematic viscosity @ 50° C/122°F	373.6
Density in kg/m³ @ 15°C per ISO 3675	0.9887
Water content, % Vol.	0.05
Sulphur content in % per ISO 8754	3.14
Flash point, °F	186
Pour point, °F	27
API Gravity @ 60 °F	11.5
Ash content	0.042
Delivered temperature, °F	98.5°
Sample seal numbers	264847 264849 264848 264850

samples each grade collected from ship manifold whilst bunkering.
Page 3: Receiving vessel. Page 4: Receiving vessel.
Marpol regulation 14(1) and 18(1). According to regulation 4(a), the sulphur
a SOx emission control area must not exceed 1,5% m/m³.

CHIEF ENGINEER
GRACE ONE

Vessels stamp

Signature chief engineer/Master

Receiving vessel: 264847
264849
Barge: 264848
264850

Remarks:

Received the above in good condition.
Also received three representative drip samples each grade collected from ship manifold whilst bunkering.
Page 1: Administration. Page 2: Barge. Page 3: Receiving vessel. Page 4: Receiving vessel.
"Fuel oil supplied is in conformity with Marpol regulation 14(1) and 18(1). According to regulation 4(a), the sulphur
content of fuel oil used on board ships in a SOx emission control area must not exceed 1,5% m/m³."

MT STAR GOETHALS
IMO No. 9134749
PANAMA

Suppliers stamp and signature

CHIEF ENGINEER
GRACE ONE

Vessels stamp


Signature chief engineer/Master

BUNKERS SUPPLIED BY CHARTERERS
SOLELY ON THEIR ACCOUNT, OWNERS/
MANAGERS NOT LIABLE FOR ANY NON
PAYMENT ISSUES.

BUNKERS SUPPLIED BY CHARTERERS
SOLELY ON THEIR ACCOUNT, OWNERS/
MANAGERS NOT LIABLE FOR ANY NON
PAYMENT ISSUES.

PRUEBA No.4
CARREIRA PITT P.C. ABOGADOS

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- 

Does “General Maritime Law” include CIMLA?

<p>Defendant argues 1.) no lien under US law because Integr8 acted a mere bunker trader with no control over the commercial disposition over the vessel, and</p> <p>2.) US General Maritime Law does not include CIMLA.</p>	<p>Plaintiff argues 1.) Integr8 acted as a broker who serves to connect buyers with suppliers, and</p> <p>2.) Reference to General Maritime Lien Law encompasses the specific rules of law that govern lien law in the US.</p>	<p>Court finds 1.) Integr8 acted as a broker, a mere intermediary and BDR + Bunker Requisition Form stamped by Chief Engineer make the vessel the buyer. Furthermore finds, if BDR is stamped with a stamp reading “BUNKERS SUPPLIED ON ACCOUNT OF CHARTERERS SOLELY.” contract was performed by the charterer.</p> <p>2.) Court establishes that choice of law of a foreign country entails all the constitutional, legal, regulations and treaties ratified by that country. thus a reference to GML includes CIMLA.</p>
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A person who supplies necessities to a vessel has a maritime lien over the vessel by operation of the Commercial Instruments and Maritime Liens Act (hereafter CIMLA), 46 U.S.C. §31342, which provides:

“(a) Except as provided in subsection (b) of this section, a person providing necessities to a **vessel on the order of the owner or a person authorized by the owner--**

- (1) has a maritime lien on the vessel;
- (2) may bring a civil action in rem to enforce the lien; and
- (3) is not required to allege or prove in the action that credit was given to the vessel.

(b) This section does not apply to a public vessel.”

“All that matters is that the statutory requirements stated in CIMLA have been satisfied. If the statutory requirements are satisfied, a maritime lien is conferred on the necessities supplier, no matter what the contractual relationship between the parties in question.”

Under US Law what is the role on intermediaries? Does it preclude the right of the physical supplier to a maritime lien over the serviced vessel?

Two categories:

- a. “the General Contractor/Subcontractor” line of cases – which basically states general contractors but not subcontractors have a lien over the vessel. (*Port of Portland v M/V PARALLA*, 892 F2d 825 (9th Cir 1990).**
- a. “the Principal/Agent or Middle-man” line of cases – in which the necessities provider is held to have a maritime lien over the vessel, no matter how many intermediaries there are between it and the vessel. (*Marine Fuel Supply & Towing, Inc. v M/V KEN LUCKY*, 869 F 2D. 473 (9TH Cir 1988)**

Contractual Claim

Clearing house

OW Bunker A/S

Integr8

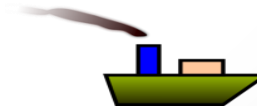
Intermediary

OW Bunkers
Panama

Agent Inc

Person
presumed with
authority to
bind vessel

Maritime Lien US Law



Court's' analysis of [46 USC S 31321 (a) (4) (b) / 31342 (a)] as follows:

“Given the law presumes who ordered the fuels was authorized and burden of proof is not on plaintiff-non movant party to prove that credit was given to the vessel, it is clear is fuels were received on behalf of the vessel and documents sealed thereto and given that the obligation contracted for necessities of the vessel where contracted on behalf of a person who by virtue of the contract is legitimated to lien the vessel, there is under US law a possible maritime lien actionable against the vessel.” – *Judge C. Ciniglio (MC1)*

Remy Francisco Carreira-Franceschi
LLB LLM MBA



CARREIRA | PITTI P.C.

A b o g a d o s