



News release

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OW BUNKER GROUP – RES COGITANS ARBITRATION AWARD UPHELD ON APPEAL

On 19 December 2013, O.W. Bunker & Trading A/S and certain of its subsidiaries as Chargors (the **OW Bunker Group** or **OWB**) entered into an English Omnibus Security Agreement with ING Bank N.V. (**ING**) as Security Agent (the **Security Agreement**). ING acts as agent for a syndicate of lenders to the OW Bunker Group. The Chargors are listed at the end of this announcement.

Pursuant to the Security Agreement, members of the OW Bunker Group assigned by way of security to ING all rights, title and interest in their third party and intercompany receivables, both current and future (**Receivables**).

On 12 November 2014, Paul David Copley, Ian David Green and Anthony Victor Lomas, of PricewaterhouseCoopers LLP, 7 More London Riverside, London in the United Kingdom (the Receivers) were appointed as joint receivers of the Security Assets (as defined in the Security Agreement), which includes the Receivables.

On 13 November 2014, Product Shipping & Trading SA (PST), a customer of O.W. Bunker Malta Ltd. (OWB Malta), started London arbitration proceedings, seeking, among other things, a declaration that it was under no obligation to pay OWB Malta (and, accordingly, ING as its assignee) the purchase price for the bunkers it had received and consumed. The arbitration related to, among others, a supply to PST's vessel, the Res Cogitans. A four day hearing was held before the arbitral tribunal from 3 February 2015 to decide a number of questions in relation to the Res Cogitans supply claim.

On 16 April 2015, the Tribunal provided their award in the Res Cogitans arbitration (the Award). ING's entitlement to the debts was vindicated and confirmed in the Award. A copy of the Award is available on the Receivers' website at the following address:

<http://www.pwc.co.uk/business-recovery/administrations/owbunker.jhtml>

The Tribunal rejected the customer's argument and said, among other things, that:

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PricewaterhouseCoopers LLP is a limited liability partnership registered in England with registered number OC303525. The registered office of PricewaterhouseCoopers LLP is 1 Embankment Place, London WC2N 6RH. PricewaterhouseCoopers LLP is authorised and regulated by the Financial Conduct Authority for designated investment business.



- The underlying contract between OWB and the customer was not one to which the UK Sale of Goods Act 1979 (**SOGA**) applied. Accordingly, the provisions of SOGA (including implied warranties and terms) were not relevant. Similarly, questions of retention and passing of title were not relevant and did not affect the customer's obligation to pay OWB/ING;
- *"the suggestion that, if bunkers supplied and consumed were not paid for, [OWB] would have no remedy or would be thrown back to reliance upon some extra-contractual remedy...appears to us to be extraordinary, and wholly uncommercial."*;
- *"once the 60 day period of credit had elapsed, [the customers] were in breach of contract, the remedy for which was a claim in debt. We have seen nothing in the authorities to suggest that this simple and straightforward conclusion is incorrect"*;
- *"[OWB] have not been shown to have been in breach of any of their obligations under the contract with [the customers]"*.

The Tribunal also confirmed that, in accordance with the terms of the contract, there was no reason why OWB/ING would not be entitled to contractual interest and costs.

PST appealed the Award to the English High Court and the appeal was heard before Mr Justice Males during a three day hearing from 7 July 2015 (the **Appeal**). The Award was confidential, but has now become a public document, as it was referred to in open court during the Appeal. Mr Justice Males handed down his judgment in the Appeal on 14 July 2015 (the **Appeal Judgment**), in which he dismissed PST's appeal and upheld the findings in the Award. The Appeal Judgment confirms that the contract between OWB and PST was not a contract for the sale of goods and that ING (as assignee) has a contractual right to the sums due and owing in respect of the bunkers supplied and that there is no breach by OWB of its contract with PST. Mr Justice Males also held that the fact that customers may face the possibility of arrests from the physical suppliers in other jurisdictions did not affect their obligations under contract with OWB/ING. Accordingly, ING will now be seeking an order for payment from PST and will also seek to recover its costs incurred in enforcing its rights from PST.

A copy of the Appeal Judgment is available on the Receivers' website at the following address:

<http://www.pwc.co.uk/business-recovery/administrations/owbunker.jhtml>

Paul Copley, joint receiver and PwC UK partner said: *"This is an important decision and, as expected, confirms the arbitration outcome. In particular, it gives customers clarity that they need to pay ING in accordance with the account details set out on their invoices, and we will continue active engagement with customers to ensure their debts are settled."*

ING's contractual right to payment of the sums due from customers has now been confirmed by both a maritime arbitral tribunal and the High Court. Accordingly, the Receivers will continue to pursue OWB customers for full recovery of all sums due. Until such time as payment is made, or settlement has been reached or security provided, customers' vessels remain at risk of arrest. The Receivers have



already successfully arrested numerous customers' vessels, and will continue to look to arrest vessels if payment or security is not provided.

ENDS

Notes to editors

1. Further information on OW Bunker

OW Bunker was a leading global independent marine fuel (bunker) company founded in Denmark in 1980, with operations in 29 countries. OW Bunker acted as a physical distributor and reseller of marine fuel, and operated a fleet of around 30 bunker vessels. OW Bunker also provided risk management solutions to control costs, minimise risk and protect against market fluctuations.

Security Agreement Chargors

1. O.W. Bunkers (UK) Limited, (Registered No: 03978855);
2. O.W. Bunker Germany GMBH, (Registered No: HRB 100089 (Amtsgericht Hamburg);
3. O.W. Bunker China Limited, (Registered No: 0900648);
4. O.W. Bunker Malta Ltd., (Registered No: C22059);
5. O.W. Bunker (Netherlands) B.V., (Registered No: 24325325);
6. Bergen Bunkers AS, (Registered No: 943659524);
7. Dynamic Oil Trading (Singapore) Pte. Ltd., (Registered No: 201221068G);
8. O.W. Bunker Far East (Singapore) Pte. Ltd., (Registered No: 199201808K);
9. O.W. Bunker (Switzerland) SA, (Registered No: CHE-112.483.462);
10. O.W. Global Trading SA, (Registered No: CHE-462.568.346);
11. O.W. Bunker Middle East DMCC, (Registered No: DMCC1013);
12. O.W. Bunker North America Inc., (Registered No: 1088636);
13. O.W. Bunker USA Inc., (Registered No: 0801553486);
14. O.W. Bunker & Trading A/S, (Registered No: 66441717);
15. O.W. Supply & Trading A/S, (Registered No: 17729071);



2. Further information on the receivership

For further information on the receivership please see <http://www.pwc.co.uk/owbunker>

Contact email address: owbunker-queries@uk.pwc.com