

BUNKERS INTERNATIONAL CORPORATION



The latest reports that Bunkers International Corporation have filed for Chapter 11 protection for itself and affiliated companies once again highlights the risks that owners and charterers face of having to potentially pay twice for the same bunkers, that is paying both to the head contractor, Bunkers International, and any sub-contractors, as the physical supplier.

This 'double jeopardy' has been explored extensively in courts around the world, in particular in England, the USA and Singapore following the collapse of OW Bunkers (OW), and was the background to the recent High Court decision in the 'Res Cogitans' decision, where the High Court ruled that the vessel owner had to pay OW, and could not use the retention of title by the physical supplier as a defence to OW's claim for payment. That decision will be appealed before the English Court of Appeal in mid-September 2015.

The Bunkers International Corporation terms and conditions are governed by US law and contain a retention of title clause and aim to create a maritime lien over the vessel in favour of Bunkers International, whether the bunkers are stemmed by the vessel owners or a third party. There does not however appear to be a "liberty to consume" the bunkers as there is in the terms of OW. Owners and charterers who have stemmed bunkers from Bunkers International would be advised to check whether their physical suppliers have been paid and to clarify promptly what quantity of bunkers remain on board, in order to minimise potential issues of double jeopardy, should the physical suppliers be out of pocket.

The law in this area is complicated and different results can ensue in different jurisdictions, so owners and charterers will be well advised to check the position promptly.



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