

Maritime Liens— Physical Suppliers' Perspective



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Expectations

- OW/ING
 - Supplied no fuel
 - Paid for no fuel
 - Only expected a small margin on each transaction
 - Demand 100% of the value of the fuel
 - Agreed to allow NuStar to pursue maritime lien claims outside OW's bankruptcy proceeding
 - ING's security agreement granted no maritime lien rights

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Expectations

- NuStar
 - Physically supplied the fuel
 - Worth more than \$18 million
 - Pursued maritime lien claims against vessels worldwide
 - Obtained security for each claim
 - Identified by the Owner, Charterer or their agents in each sales confirmation as the supplier

Expectations

- NuStar (cont.)
 - Coordinated delivery in each case with ship's agent and vessel's chief engineer
 - Bunker Delivery receipt referenced NuStar's maritime lien, which was signed by each chief engineer
 - Expected that it possessed a maritime lien against each vessel

Expectations

- Vessel Owners
 - Need bunker fuel for vessel propulsion systems
 - Playing the market to obtain lowest cost bunkers
 - Don't want to be exposed to double liability
 - *In personam* v. *in rem* claims
 - Interpleader actions
 - In a variety of cases, did not act as disinterested stakeholder
 - Took sides with OW/ING to avoid potential double-liability exposure

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The Statute

- CIMLA—every person that provides necessities on the order of the owner or person authorized by the owner is entitled to a maritime lien (46 U.S.C. § 31342(a))
 - No requirement for contractual privity or agency relationship
- Persons authorized by the owner are presumed to include (46 U.S.C. § 31341(a)):
 - Owner
 - Master
 - Charterer
 - Officer or agent of either Owner or Charterer

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