



ENTERED
12/19/2011

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
BAYTOWN NAVIGATION INC.	§	
	§	
DEBTOR(S)	§	CASE NO.11-35926
	§	Chapter 11
	§	JOINTLY ADMINISTERED

ORDER TO SHOW CAUSE

Before the Court are the HSH Nordbank AG (HSH) Motion to Dismiss or Convert to a Chapter 7 and the HSH Motion for Relief from Stay.¹

Vigorous advocacy on behalf of a client is common and welcome in Bankruptcy Court. It is the duty of this Court to hear all evidence and arguments made in good faith unfortunately, the evidence before the Court appears to demonstrate a reckless disregard for truth and an intentional strategy to delay and impede the bankruptcy proceedings by the Senior Lenders through their agent, HSH Nordbank AG. Such behavior by any litigant requires this Court to give notice and hold a future hearing to consider whether sanctions are appropriate, including possibly equitable subordination, loss of voting rights, costs, attorney's fees, and

¹After reaching an agreement to be paid directly by the Senior Lenders, the Junior Lenders and Unsecured Committee changed from opposing the Senior Lender motions to joining the motions. See Appendix A.

exemplary damages against the Senior Lenders, their counsel, and as well as the Junior Lenders and the Unsecured Committee.

I. HSH Nordbank AG is ordered to show cause why it and/or its principals, the Senior Lenders, and counsel should not be sanctioned under *Rule 9011 (b) & (c)(3); 11 U.S.C. § 105 and 28 U.S.C. § 1927.*

A. Brief Background

On July 8, 2011, Debtor OMEGA Navigation and its nine wholly owned subsidiaries (Debtors) filed Chapter 11 bankruptcy in the Southern District of Texas. Debtors are an integrated fleet of product tankers collectively, an international provider of marine product shipping, focusing on the seaborne transportation of refined petroleum products.

Among other roles, HSH Nordbank AG (HSH) is the appointed agent, security agent, and trustee for the Senior Lenders: HSH itself, Credit Suisse, Lloyds Bank (f/k/a the Bank of Scotland) and Commerzbank (f/k/a Dresdner Bank AG). On behalf of itself and all the Senior Lenders, HSH has participated in this bankruptcy case from its inception. HSH, without waiving any rights, has permitted Debtors to use cash collateral from July 11, 2011 to date. Thereafter, following some negotiations, the Senior Lenders and Junior Lenders have agreed to Debtors use of cash collateral at least up to the status hearing to be held on December 19, 2011. (Docket # 416).

B. HSH Motions

On August 25, 2011, HSH filed its Motion to Dismiss and/or Convert Debtors cases to Chapter 7; on September 2, 2011, HSH filed its Motion for Relief From Stay which reurged most if not all of the same claims raised in the first motion. Each HSH motion raised issues of serious concern to this court.

1. HSH accused Debtors principal of self-dealing in a transaction which it actually approved in 2010.

First, the HSH motions alleged, among other claims, that the Court should exam pre-petition actions of insider dealing which damaged Debtors. HSH charged that in July 2010, Debtors borrowed \$5million from George Kassiotis, its CEO, through his corporation. Specifically, in its Motion to Dismiss or Convert, HSH contends: "Additionally, Debtors engaged in questionable insider trading transfers and under took a corporate reorganization mere months before the Senior loans matured and they filed these cases, requiring further inquiry by a disinterested fiduciary." (Docket # 190)

Again, HSH raises the same charge against the Debtors CEO in its Motion for Relief from Stay.(Docket # 220) In addition to its briefs, on November 21, 2011, HSH included this issue in its answer in Adversary Proceeding 11-3591.

However, the evidence shows that all Junior and Senior lenders were not only given notice of the loan and its provisions, but approved the transaction as a means to properly get cash to Debtors.² (Debtor's Ex. 114 & 115)

2. HSH claims that the Delos Transaction showed bad faith.

HSH repeatedly alleged that the Delos Transaction was a bad faith pre-petition act that justified dismissal or conversion for cause. HSH contended that Debtors holding company by selling a portion of its interest in another wholly-owned venture, had improperly transferred its assets pre-petition. HSH repeatedly raised this issue as evidence that Debtors impaired the secured assets of the Senior lenders.

However, the evidence appears to show that HSH had no security interest in these assets. Pre-petition HSH never objected to this transaction or claimed it was a basis for default. There appears to be no evidence that shows any impropriety by Debtors regarding the Delos transaction.

3. HSH accuses Debtors of "Diversion" of Millions of Dollars which Debtor properly paid to creditors under the loan documents.

From its first filing on July 11, 2011, HSH contended that "the Debtors have admitted to diverting millions of dollars of revenues away from the Senior Facilities Lenders in violation of the Senior Facilities Documents, apparently to satisfy their

² No default was declared by HSH.

obligations under the terms of certain now terminated joint ventures.” However, HSH failed to add that Debtors “diversion” was a mistaken deposit in the wrong account from which Debtors paid creditors who would have otherwise been paid by HSH from the same monies. In five years of deposits Debtors made a one time mistake.

This mistaken deposit, which was referred to by one lender as a “technical” violation of the loan documents, so incensed a Commerzbank executive named, Martin Hugger, that he rejected any agreement with debtors and vowed to sell the vessels to any other purchaser and never to do business with Debtors due to this “diversion.”

C. Effect on Scheduling

United States Bankruptcy Courts take such claims very seriously and ordinarily schedule a hearing quickly to determine whether there is a threat to the bankruptcy estate. See *In re Guyana Development*, 201 BR 727 (BSD Tx 1996) (Court set IRS motion for a hearing to appoint a trustee immediately where IRS alleged that Debtor had diverted assets pre-petition.).³

In addition, all parties agreed that HSH's allegations would require substantial discovery and presentation of expert testimony. Consequently, the Court set the HSH

³ Although HSH made allegations of pre-petition bad actions by Debtors, it never requested any replacement of Debtors management.

motions for hearing on Oct 24, 2011. It was agreed that the hearing would require approximately five days.

Thereafter, HSH moved to conduct marine surveys of all eight vessels. Surveys are not ordinarily part of the process of an appraisal by experts in the shipping industry.⁴ While somewhat unusual in the shipping industry, any lender may inspect its collateral. However, the HSH request necessitated a continuance of the hearing until November 28, 2011. Again, five days were set aside on the Court's schedule for this hearing. Enormous discovery costs were incurred by the Debtors due to HSH's demands.

II. HSH trial strategy appears intended to delay and impede the proceedings of this Court.

A. HSH tried to avoid the hearing on its own motions scheduled for November 28, 2011.

At a status hearing on November 14, 2011, HSH informed the Court that there was no need for the hearing set for November 28, 2011 to go forward. Since HSH had made an agreement with the Junior Lenders and the Unsecured Creditors Committee which would pay them part of the proceeds of the foreclosure sale of the vessels by

⁴ Article by Paul Willcox, *The Science of Ship Valuation*.

HSH, if the Junior Lenders and the Committee would withdraw their opposition and, instead, join Senior Lenders' motion to Dismiss and Motion for Relief From Stay.

It is a routine practice for parties to make agreements and change their positions in the course of any bankruptcy case. However, it is extraordinary for a Lender to make an agreement for dismissal with parties other than the debtors and then declare that these parties will inevitably vote against the debtors and for liquidation by the Lender for any possible future plan. There is a serious issue whether such conduct violates *11 U.S.C. § 1125*.

The Court denied the HSH motions to immediately dismiss cases without a hearing. Such a peremptory dismissal would violate *11 U.S.C. § 1109 (b); 1112 (b)(1)*.

B. HSH threatens to sue Debtors independent board of directors unless they either dismiss Debtors bankruptcy and/or allow HSH to liquidate Debtors vessels.

Thereafter, in spite of the Court's denial of the HSH request to win without allowing a hearing, HSH sent a letter to Debtor's three independent directors⁵ which stated:

We are writing to you in your capacity as a director of Omega. We are the Agent as defined in the Senior Loan Agreement, and we are the Senior Facilities Agent as defined in court documents in the Chapter 11 proceedings.

⁵ Debtors board is comprised of three independent directors and two corporate-executive directors.

As a member of Omega's Board, we assume that you are well apprised of the facts and circumstances surround Omega's Chapter 11 bankruptcy filing and recent developments in the Chapter 11 Cases. As you know, we have strongly opposed the Chapter 11 filing and believe that this reorganization effort is not in the best interests of Omega's creditors.

We write to advise you that our view is now shared by the junior lenders and the committee of unsecured creditors. As a result of an agreement reached between the senior lenders, the junior lenders, and the committee of unsecured creditors, all creditor constituencies now uniformly oppose the continuation of these Chapter 11 proceedings and support the Senior Facilities Agent's Motion to Convert these cases to a Chapter 7 liquidation proceeding. In these circumstances, we believe that Omega's continued pursuit of a reorganization strategy that has yet to be identified in the face of unified creditor opposition will lead Omega to incur unnecessary fees and administrative expenses, and otherwise waste estate assets that could more appropriately be applied to satisfying obligations owed to creditors.

We therefore take this opportunity to remind you of your fiduciary duties, and invite you to reconsider your position, and put an end to Omega's opposition to the motion for conversion to Chapter 7. If you decide not to do so, then we must tell you that we are preparing for possible proceedings against you personally, to recover losses sustained by us and by other senior lenders as a result of what we believe amount to breaches of your fiduciary duties. In the meantime, we would of course welcome your explanation as to why you are allowing Omega to proceed in this way.

(emphasis added)

On learning about the threatening letters, Debtors requested that HSH retract them because the letters violated the automatic stay *11 U.S.C. § 362*. HSH refused.

Thereafter, Debtors were forced to sue HSH to compel withdrawal of the threats against Debtors independent board members in Adversary case 11-03591 (Docket # 382).

On November 28, 2011, at a hearing on Debtor's request for a Temporary Restraining Order, HSH first stated that the letter was just meant to inform the independent directors about current events on going in the Debtors cases. Second, HSH argued that it only warned the directors and did not actually sue them. Third, HSH argued that it had a right to send such a letter because HSH has its own cause of action against Debtors' Board of Directors for breach of their fiduciary duties by allowing Debtors to file bankruptcy. Such arguments appear to be disingenuous.

In considering the HSH arguments, the Court stated that the question of whether the debtor or creditor owns a cause of action is a very complex issue which is frequently litigated. A short list of the cases considered by the Supreme Court and Fifth Circuit alone would comprise: *Caplin vs. Marine Midland Grace Trust*, 406 US 416, 433-34 (1972); *In re Educators Group Health Trust*, 25 F3rd 1281, 1284 (5th Cir 1994). *Matter of S. I. Acquisition, Inc.*, 817 F2d 1142, 1153-54 (5th Cir 1987); *Louisiana World Exposition v. Fed. Ins. Co.*, 858 F2d 233,245 (5th Cir 1988); *In re Mortgage America Corp.*, 714 F2d 1266, 1274 (5th Cir. 1983); *SEC vs. Sharp Capital Inc.*, 315 F3rd 541 (1983).

Moreover, the rule in the Fifth Circuit is that creditors must come first to the Court for Relief from Stay before seizing property which may belong to the debtor. *In re Chestnut*, 44 F3rd 298, 302 (5th Cir 2005). The Court notes that earlier in the case, HSH clearly recognized its duty to come to the Court request relief from stay, but ignored its duty on this very serious occasion.

(Docket # 220, HSH's Motion for Relief from Stay)

At a hearing on November 21, 2011, the Court granted the Temporary Restraining Order and directed HSH to retract the letters.⁶ However, HSH, instead of complying with this Court's Order immediately, delayed a week before retracting the letters.

At the same hearing, the Court requested that the U.S. Trustee appoint an examiner to determine whether sanctions should be awarded against HSH due to the letters. Pursuant to *11 U.S.C. §1104(d)*, the appointment of Edward L. Rothberg as Examiner in the Adversary case was approved.

At a hearing on December 5, 2011, the Court appointed examiner presented his findings and report. Specifically, the examiner found:

In order to foster the purpose of the automatic stay, and in view of the Court's finding of a likelihood of success on behalf of the

⁶ After the entry of the order, the parties have agreed to extend the Temporary Restraining Order.

Debtors, the Examiner concludes that it is appropriate to sanction HSH at this time by ordering it not to:

- a. take any further action in or affecting the Breach of Fiduciary Duty Causes of Action, if any,
- b. threaten to file causes of action, or file causes of action, against any Director (whether relating to asserted harm to the estate generally or particularized harm to the Senior Lenders) during the pendency of the Debtors chapter 11 cases; and
- c. contact any Director with reference to consenting to or not opposing any pleading filed in the chapter 11 cases

Further, the Examiner concludes that if the Debtors prevail at final trial on the merits, the Court should sanction HSH by awarding the Debtors their attorneys' fees and expenses incurred in prosecuting this adversary proceeding to conclusion including the fees incurred by the Examiner. *See In re Repine*, 536 F.3d 512,522 (5th Cir.2008). Obviously, the full amount of this sanction cannot be determined until the litigation is concluded.

Finally, as discussed more fully below, the Examiner does not believe that the court should sanction HSH by making a criminal referral.

.....

Here, the Examiner believes that the Court should sanction HSH for all of the reasonable fees and expenses the Debtors ultimately incur in this adversary proceeding including the fees of the Examiner. The basis for this belief is that shortly after the Letter was sent, counsel for the Debtors notified counsel for HSH that it considered the Letter a violation of the stay and requested that it be retracted. HSH refused. This left the Debtors with no choice but to file the adversary proceeding and incur the attorneys' fees and expenses attendant thereto. HSH could easily have retracted the Letter and avoided these expenses.

In addition, the two motions filed by HSH included claims that Debtors would never be able to rehabilitate or reorganize and that the Senior Lenders' collateral was deteriorating in value. These claims are very important and, if proven, may well justify dismissal, conversion, or relief from stay. However, such allegations often

require discovery and expert testimony. Challenging a debtor's ability to reorganize may be raised early in the case, but this Court, at least, to conserve judicial resources will often try that issue in tandem with a debtor's confirmation hearing. If presented alone, the question of diminution in value of a lender's collateral is an issue which can be streamlined and heard alone in a motion to dismiss expeditiously early in the course of the case.

III. ISSUES to be determined by the Court

HSH's allegations have caused extraordinary costs, in attorneys' fees and expenses to all parties over five months of litigation, and five days of trial. The allegations made by HSH since virtually the beginning of these cases have been very serious, including alleged multiple examples of bad faith, administrative insolvency, unified creditor opposition to negotiating a plan and a hopeless inability to confirm a Chapter 11 plan. The Court accepts the testimony of witnesses for the Debtors that HSH's bad faith allegations have cast a very "dark shadow" over the Debtors efforts to conduct their businesses in a manner that would maximize the value of these estates for the benefit of all concerned.

Litigants are fully entitled to assert their rights aggressively in a Chapter 11 case. However, when litigants make allegations such as those HSH made and

continue to press those allegations right up until the day of trial, the Court assumes they are made in good faith and HSH would offer supporting evidence and testimony.

The Senior Lenders announced at trial that they were not pursuing three of their four allegations of bad faith, in part because HSH had previously consented to or acknowledged some of the very same transactions that they had complained about.

Consequently, the Court will set a status hearing regarding how to proceed on the following issues:

1. Should the show cause order be scheduled for a hearing after any further reports are filed by the appointed examiner in Adversary Case 11-0 3591?
2. Do the afore listed HSH claims of pre-petition bad acts by Debtors meet the requirements for sanctions under *11 U.S.C. 105 and 28 U.S.C. 1927*, or Federal Rules of Bankr. Proc Rule 9011?
3. If sanctions are justified, are all the Senior lenders subject to sanctions?
4. If sanctions are justified, are HSH counsel, White and Case, subject to sanctions?
5. If this Court considers sanctions against HSH's counsel, must HSH obtain other counsel to avoid a conflict of interest?
6. If sanctions are justified, what are the appropriate sanctions that the Court should consider?

7. Do the HSH actions justify denial of voting rights or subordination of the claims of the Senior Lenders?

8. Does the Joinder in the HSH motions by Junior Lender and Unsecured Committee and in the November 3, 2011 agreement justify sanctions?

Signed this 19th day of Dec, 2011 at Houston, Texas.



KAREN K. BROWN
UNITED STATES BANKRUPTCY JUDGE

APPENDIX A

unsealed
SEALED
by Court Order

DATED *3rd* November 2011

HSH NORDBANK AG
(as Senior Agent and Senior Mortgagee)

**THE BANKS AND FINANCIAL INSTITUTIONS
LISTED IN SCHEDULE 1**
(as Junior Banks)

NIBC BANK N.V.
(as Junior Agent and Junior Mortgagee)

AGREEMENT
relating to m.v "OMEGA EMMANUEL",
"OMEGA THEODORE", "OMEGA PRINCE",
"OMEGA PRINCESS", "OMEGA LADY SARAH",
"OMEGA LADY MIRIAM",
"OMEGA QUEEN" and "OMEGA KING"



STEPHENSON HARWOOD

CONTENTS

	Page
1 Definitions and Interpretation	2
2 Support of Motions	3
3 Standstill Period	3
4 Cooperation between the Senior Mortgagee and the Junior Finance Parties	3
5 Notices	4
6 Miscellaneous	5
7 Governing Law, Jurisdiction and Venue	7
Schedule 1	8
Junior Banks	8
Schedule 2	9
Support Obligations	9

AGREEMENT

Dated 3rd November 2011

BETWEEN

- (1) HSH NORDBANK A.G., a company incorporated in the Federal Republic of Germany and having its registered office at Gerhart-Hauptmann-Platz 50, Hamburg, Federal Republic of Germany (the "Senior Mortgagee" as agent, security agent and trustee for the Senior Banks and the Senior Swap Banks, which expression includes its successors, transferees and assigns);
- (2) The Banks and Financial Institutions listed in Schedule 1 (together the "Junior Banks" which expression includes their successors, transferees and assigns); and
- (3) NIBC BANK N.V., a company acting through its office at Carnegieplein 4, 2517 KJ, The Hague, The Netherlands (the "Junior Mortgagee" as agent, security agent and trustee for the Junior Banks, which expression includes its successors, transferees and assigns).

WHEREAS

- (A) The Senior Finance Parties and the Debtors entered into the Senior Finance Documents.
- (B) The Junior Finance Parties and the Debtors entered into the Junior Finance Documents.
- (C) Pursuant to a coordination agreement dated 27 March 2008 made between the Debtors, the Senior Mortgagee, the Junior Banks the Junior Swap Banks and the Junior Mortgagee (the "Coordination Agreement"), the parties agreed to regulate certain of their respective rights under the Transactions Documents to which they are a party.
- (D) The Debtors are currently in Chapter 11 proceedings pending in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court") Case No. 11-35926 (the "Cases").
- (E) The Senior Mortgagee has filed the Motions (as defined in Schedule 2) with the Bankruptcy Court.

- (F) The Junior Finance Parties have agreed to support the Motions and a Liquidating Plan (as defined in Schedule 2) on the terms and subject to the conditions of this Deed, including Schedule 2 hereto.

NOW THIS DEED WITNESSETH as follows:

1 Definitions and Interpretation

1.1 Unless otherwise specified in this Deed, or unless the context otherwise requires, all words and expressions defined in the Coordination Agreement shall have the same meaning when used in this Deed.

1.2 In addition to the words and expressions defined in the Recitals above and in the Coordination Agreement, in this Deed:

"Cases" has the meaning set out in recital (D).

"Debtors" means together the Borrower and the Owners.

"Decision Date" means the date of entry of any order (unless stayed pending appeal) of the Bankruptcy Court deciding the Motions.

"Standstill Period" means the period commencing on the Decision Date and ending at noon New York time on the forty-fifth (45th) day thereafter.

"Support Obligations" means the obligations of the parties set forth in Schedule 2 hereto.

"Trustee" means any trustee under Chapter 7 of the U.S. Bankruptcy Code appointed in the Cases.

1.3 Headings in this Deed are for convenience of reference only and are not part of the substance hereof.

1.4 All references in this Deed to a time of day shall mean the time in London unless otherwise indicated.

1.5 This Deed constitutes and contains the entire agreement of the parties hereto and supersedes any and all prior agreements, negotiations, correspondence,

understandings and communications among the parties hereto, whether written or oral, respecting the subject matter hereof.

- 1.6 References in this Deed to "Clauses" and "Schedules" are to clauses and schedules herein and hereto unless otherwise indicated.

2 Support of Motions

The Senior Finance Parties and the Junior Finance Parties agree to the Support Obligations.

3 Standstill Period

- 3.1 In consideration of the Support Obligations of the Junior Finance Parties, the Senior Mortgagee hereby agrees and undertakes that during the Standstill Period it will not seek any order for the sale or other disposition of, or realisation on, any or all of the Ships from any court without the Junior Finance Parties' consent; provided that the Senior Mortgagee may at any time take all such actions or file any proceedings as may be necessary to preserve or avoid the loss of or extinction of any of the Senior Finance Parties' rights under or pursuant to the Mortgaged Property or their interest in any of the Ships.

- 3.2 During the Standstill Period, the Junior Finance Parties agree and undertake to fully cooperate with the Senior Mortgagee and the Trustee to move any or all of the Ships into, and to arrest such Ships in, a jurisdiction selected by the Senior Mortgagee at its sole discretion after consultation in good faith with the Junior Finance Parties.

4 Cooperation between the Senior Mortgagee and the Junior Finance Parties

- 4.1 The Senior Mortgagee and the Junior Finance Parties hereby agree that from the date of this Deed until the termination of the Standstill Period they will enter into good faith negotiations with a view to:

- 4.1.1 agreeing an approach to the marketing and the sale of all or any of the Ships, including liaising with the Trustee in this respect with the goal of maximising proceeds of sale;

- 4.1.2 selecting a technical and commercial manager for all of the Ships to be recommended to the Trustee and/or to assist the Senior Finance Parties and the Junior Finance Parties with the enforcement of any rights and remedies which the Senior Finance Parties or the Junior Finance Parties may have pursuant to any of the Transaction Documents (including the Deed of Coordination) to which they are a party provided that if the Trustee abandons the Ships to the Finance Parties and technical and/or commercial managers have not been agreed, the Senior Finance Parties may appoint first class technical and commercial managers; and
- 4.1.3 obtaining the cooperation and agreement of the Trustee to a sale of all or any of the Ships (and an agreed process therefor) and the appointment of an agreed technical and commercial manager of the Ships.

5 Notices

5.1 General. Unless otherwise specifically provided, any notice under or in connection with this Deed shall:

- 5.1.1 be in writing delivered personally or by first-class prepaid letter or facsimile transmission or other means of telecommunication in permanent written form;
- 5.1.2 be deemed to have been received, in the case of a letter, when delivered personally or three (3) days after it has been put in to the post and, in the case of a facsimile transmission or other means of telecommunication in permanent written form, at the time of despatch (provided that if the date of despatch is not a business day in the country of the addressee or if the time of despatch is after the close of business in the country of the addressee it shall be deemed to have been received at the opening of business on the next such business day); and
- 5.1.3 A notice shall be sent;
 - (a) to the Senior Finance Parties:
HSH Nordbank AG
Gerhart-Hauptmann-Platz 50
20095 Hamburg

Germany

Fax No: +49 40 3333 34118

Attn: Michael Suhm

(b) to the Junior Finance Parties:

BTMU Capital Corporation

111 Huntington Avenue,

Suite 400, Boston

MA 02199-8001

United States of America

Fax No: + 1 617 345 1444

Attn: SVP Administration

NIBC Bank N.V.

Carnegieplein 4

2517 KJ The Hague

The Netherlands

Fax Nr. +31703425577

Attn: Mr. Robbert Jan Sougé

or to such other address as the relevant party may notify the other.

5.2 **Valid notices** A notice under or in connection with this Deed shall not be invalid by reason that its contents or the manner of serving it does not comply with the requirements of this Deed if the failure to serve it in accordance with the requirements of this Deed has not caused any party to suffer any significant loss or prejudice.

5.3 **English language** Any notice under or in connection with this Deed shall be In English.

5.4 **Meaning of "notice"** In this Clause "notice" includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

6 **Miscellaneous**

6.1 **Rights cumulative, non-exclusive** The rights and powers of each of the parties under this Deed are cumulative; and nothing in this Deed shall have the effect of

excluding or limiting any right or remedy which each of the parties hereto would, apart from this Deed, have under any Applicable Law.

- 6.2 **Severability** Any provision of this Deed that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Applicable Law, the parties hereto hereby waive any provision of law that renders any provisions hereof prohibited or unenforceable in any respect.
- 6.3 **Counterparts** This Deed may be executed in several counterparts, each of which shall be an original, but which together shall constitute but one and the same document. Delivery of an executed counterpart of this Deed by facsimile will be deemed as effective as delivery of an originally executed counterpart. Any party delivering an executed counterpart of this Deed by facsimile will also deliver an originally executed counterpart, but the failure of any party to deliver an originally executed counterpart of this Deed will not effect the validity or effectiveness of this Deed.
- 6.4 **Modifications** No term or provision of this Deed may be changed, waived, discharged or terminated orally, and may only be changed, waived, discharged or terminated by an instrument in writing signed by the parties thereto.
- 6.5 **Binding Effect, Successors and Assigns** The terms and provisions of this Deed and the respective rights and obligations of the parties hereunder shall be binding upon, and inure to the benefit of, their respective successors and assigns and no third party may rely upon, enforce or receive any benefit from this Deed (or any of the terms hereof).
- 6.6 **No Third Party Beneficiaries** A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.
- 6.7 **Conflicts** In the event of any conflict between this Deed and any of the Senior Finance, the Junior Finance Documents or the Coordination Agreement, the

provisions of this Deed shall prevail; provided that nothing in this Deed shall impair or otherwise effect any of the rights and obligations of the Senior Finance Parties or the Junior Finance Parties under the Coordination Agreement except as expressly set out in this Deed.

- 6.8 **No Partnership** It is not the intention of the parties hereto, and nothing herein shall be construed, to create any partnership, joint venture or other relationship among the parties hereto.
- 6.9 **No Agency** It is not the intention of the parties hereto and nothing herein or in any other Transaction Document shall be construed to constitute the Senior Mortgagee as agent, security agent and trustee of the Junior Finance Parties or any of them.
- 6.10 **Confidentiality** This Deed is confidential but may be publically disclosed in the Cases by the Senior Mortgagee. Until such public disclosure, no party shall disclose its contents without express consent of each of the other parties save as required by Applicable Law if required in connection with any legal, administrative or arbitration proceedings, and further that each party may make it available to their retained professional advisors.

7 Governing Law, Jurisdiction and Venue

- 7.1 This Deed is governed by the English Law. The High Court of Justice in England shall have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a "Dispute"). The parties hereto agree that the High Court of Justice in England is the most appropriate and convenient court to settle disputes and accordingly no party will argue to the contrary. The parties submit to the jurisdiction of this High Court of Justice in England and waive any immunity from jurisdiction. This Clause 7 is for the benefit of the parties hereto only. As a result, no Junior Finance Party or Senior Finance Party shall be prevented from taking proceedings relating to a dispute in any other courts with jurisdiction. To the extent allowed by applicable law the Senior Mortgagee, the Junior Mortgagee, any other Senior Finance Party or Junior Finance Party may take concurrent proceedings in any number of jurisdictions.

Schedule 1

Junior Banks

BTMU CAPITAL CORPORATION	111 Huntington Avenue Suite 400 Boston MA 02199-8001 United States of America Fax nr.: +1 617 345 1444 Attn: SVP Administration
NIBC BANK N.V.	Carnegieplein 4 2517 KJ The Hague The Netherlands Fax Nr. +31703425577 Attn: Mr. Robbert Jan Sougé

7
je

Schedule 2

Support Obligations

Motions

Motion of HSH Nordbank AG, as Senior Facilities Agent, for an Order Dismissing the Debtors' Cases or Converting the Debtors' Cases to Chapter Pursuant to 11 U.S.C. § 1112(b), dated August 25, 2011, Dkt. No. 190

Motion of HSH Nordbank AG, as Senior Facilities Agent, for an Order Lifting the Automatic Stay Pursuant to 11 U.S.C. § 362(d), dated September 2, 2011, Dkt. No. 220

Support of Motions

The Junior Finance Parties agree to support (and not to oppose) the Motions and not to support any third party in opposing the Motions. The Junior Finance Parties will state their support for the Motions on the record in the Cases and will cooperate with the Senior Mortgagee in the prosecution of the Motions.

Relief Preference

The Senior Mortgagee agrees to seek as its primary relief in the Motions conversion of the Cases to Chapter 7 or relief from the automatic stay; failing that, the Senior Mortgagee will seek the dismissal of the Cases.

Liquidating Plan

The Junior Finance Parties agree to support the termination of plan exclusivity in the Cases and, if neither of the Motions is granted and exclusivity is terminated, to negotiate in good faith a Chapter 11 liquidating plan for the Debtors to be proposed by the Senior Mortgagee, following consultation with the Junior Finance Parties, that provides for the immediate sale of the Ships pursuant to an agreed sale process (whether by way of private sale, court auction or otherwise, but consistent with Clause 4.1.1 and 4.1.2), or the transfer of ownership of the Ships to the Senior Banks or their nominee(s) (a "Liquidating Plan"). Provided that exclusivity is terminated, the Senior Mortgagee reasonably promptly files a Liquidating Plan, a disclosure statement in respect thereof is approved under Section 1125 of the Bankruptcy Code, and the Senior Mortgagee diligently prosecutes the confirmation thereof, the Junior Finance Parties will support such

Liquidating Plan and will not file or support any other Chapter 11 plan in the Cases. The specific terms of the foregoing support (which shall not be inconsistent with the economic terms of a Liquidating Plan as set forth herein) shall be subject to separate agreement to be negotiated in good faith and shall, in any event, be conditioned on termination of exclusivity and approval of a disclosure statement under Section 1125 of the U.S. Bankruptcy Code.

EXECUTION PAGE

THIS DEED has been duly executed as a deed on the date stated at the beginning of this Deed.

THE SENIOR MORTGAGEE AND SENIOR AGENT

EXECUTED as a DEED

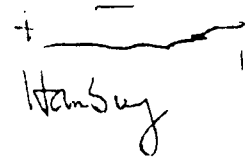
by *REINHARD GUNTER AND MICHAEL SCHMIDT*

for and on behalf of

HSH NORDBANK AG

in the presence of: *STEPHAN TÄHRDAN*

) *R. Gunter* *M. Schmidt*
)
)
)
)

+ 
Hansug

THE JUNIOR BANKS

EXECUTED as a DEED

by

for and on behalf of

BTMU CAPITAL CORPORATION

in the presence of:

)
)
)
)
)

EXECUTED as a DEED

by

for and on behalf of

NIBC BANK N.V.

in the presence of:

)
)
)
)
)

THE JUNIOR MORTGAGEE AND JUNIOR AGENT

EXECUTED as a DEED

by

for and on behalf of

NIBC BANK N.V.

in the presence of:

)
)
)
)
)

EXECUTION PAGE

THIS DEED has been duly executed as a deed on the date stated at the beginning of this Deed.

THE SENIOR MORTGAGEE AND SENIOR AGENT

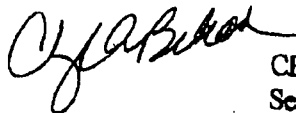
EXECUTED as a DEED
by
for and on behalf of
HSH NORDBANK AG
in the presence of:

)
)
)
)
)

THE JUNIOR BANKS

EXECUTED as a DEED
by
for and on behalf of
BTMU CAPITAL CORPORATION
in the presence of:

)
)
)
)
)



CHERYL A. BEHAN
Senior Vice President

EXECUTED as a DEED
by
for and on behalf of
NIBC BANK N.V.
in the presence of:

)
)
)
)
)

THE JUNIOR MORTGAGEE AND JUNIOR AGENT

EXECUTED as a DEED
by
for and on behalf of
NIBC BANK N.V.
in the presence of:

)
)
)
)
)

EXECUTION PAGE

THIS DEED has been duly executed as a deed on the date stated at the beginning of this Deed.

THE SENIOR MORTGAGEE AND SENIOR AGENT

EXECUTED as a DEED
by
for and on behalf of
HSH NORDBANK AG
in the presence of:

)
)
)
)
)

THE JUNIOR BANKS

EXECUTED as a DEED
by
for and on behalf of
BTMU CAPITAL CORPORATION
in the presence of:

)
)
)
)
)

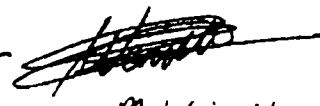
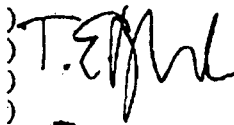
EXECUTED as a DEED
by
for and on behalf of
NIBC BANK N.V.
in the presence of:

R.A. de Haas
Associate



)
)
)
)
)

Thomas Blunden
Associate



M. Weinreich

THE JUNIOR MORTGAGEE AND JUNIOR AGENT

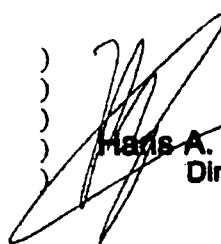
EXECUTED as a DEED
by
for and on behalf of
NIBC BANK N.V.
in the presence of:

S. Weijer



)
)
)
)
)

Maris A. Nagtegaal
Director



Hilaire M. van Acker

Principal Terms of Agreement (the "Agreement") by Official Committee of Unsecured Creditors (the "Committee") appointed in the Chapter 11 cases (the "Cases") of Omega Navigation Enterprises, Inc. ("ONAV") and its affiliated debtors (collectively with ONAV, the "Debtors") in Support of the Motions (the "Motions") by the Senior Facilities Agent¹ to Dismiss or Convert the Cases to Chapter 7 or for Relief From the Automatic Stay

Motions:	Motion of HSH Nordbank AG, as Senior Facilities Agent, for an Order Dismissing the Debtors' Cases or Converting the Debtors' Cases to Chapter 7 Pursuant to 11 U.S.C. § 1112(b), dated August 25, 2011, Dkt. No. 190
	Motion of HSH Nordbank AG, as Senior Facilities Agent, for an Order Lifting the Automatic Stay Pursuant to 11 U.S.C. § 362(d), dated September 2, 2011, Dkt. No. 220
Support of Motions:	The Committee agrees to support (and not to oppose) the Motions and not to support any third party in opposing the Motions. The Committee will state its support for the Motions on the record in the Cases, and will cooperate with the Senior Facilities Agent in a manner consistent with its fiduciary responsibilities. This Agreement and any further related documentation shall be filed on the docket in the Cases.
Relief Preference:	The Senior Facilities Agent agrees to seek as its primary relief in the Motions conversion of the Cases to Chapter 7 or relief from the automatic stay; failing that, the Senior Facilities Agent will seek the dismissal of the Cases, as alternative relief.
Support for Liquidating Plan:	The Committee agrees to support the termination of plan exclusivity in the Cases and, if neither of the Motions is granted, to negotiate in good faith a Chapter 11 liquidating plan for the Debtors proposed by the Senior Facilities Agent for and on behalf of the Senior Facilities Lenders that incorporates the economic terms set forth herein and provides for the immediate sale of the Ships pursuant to an agreed sale process (whether by way of private sale, court auction or otherwise), or the transfer of ownership of the

¹ HSH Nordbank NA is the Senior Facilities Agent and is acting and executing this Agreement solely in its capacity as agent for the lenders (the "Senior Facilities Lenders") under that certain Senior Facilities Agreement, dated as of April 7, 2006 (as amended, supplemented or otherwise modified), and not individually. This Agreement is intended to bind the Senior Facilities Lenders.

Ships to the Senior Facilities Lenders or their nominee(s) (a "Liquidating Plan"). Provided that exclusivity is terminated, the Senior Facilities Agent reasonably promptly files a Liquidating Plan, a disclosure statement in respect thereof is approved under Section 1125 of the Bankruptcy Code, and the Senior Facilities Agent diligently prosecutes the confirmation thereof, the Committee will support a Liquidating Plan and not file or support any other Chapter 11 plan in the Cases. The specific terms of such Committee support (which shall not be inconsistent with the economic terms of a Liquidating Plan as set forth herein) shall be subject to separate agreement to be negotiated in good faith and shall, in any event, be conditioned on termination of exclusivity and approval of a disclosure statement under Section 1125 of the Bankruptcy Code.

Administrative
Expenses:

If the Motions are granted and the Cases are converted to Chapter 7 or dismissed, or the automatic stay is lifted so that the Senior Facility Lenders may exercise their remedies against the Ships and their other collateral, or if the Motions are denied but a Liquidating Plan becomes effective (any such relief or occurrence, the "Relief," and the earliest date on which any Relief shall have been granted or occurred, the "Relief Date"), the Senior Facilities Agent shall cause all allowed administrative expenses included in the Budget attached to the Cash Collateral Orders entered in the Cases (Dkt. Nos. 101, 349), which have accrued through the Relief Date and which remain unpaid, to be paid from Cash Collateral to the extent required by the Cash Collateral Orders and included in the Budget (including any permitted variance), and Cash Collateral is available, or, to the extent Cash Collateral is unavailable, from the proceeds of the Disposition (as defined below) of the Ships; provided, that if, after payment of operational administrative expenses, there is insufficient Cash Collateral to pay the fees and expenses of the estates' professionals, such amounts shall be first paid from unencumbered cash then on hand in any one or more of any of the Debtor's deposit accounts before any remaining amounts may be paid from the proceeds of the Disposition of the Ships. It is understood that the Senior Facilities Agent and the Senior Facilities Lenders reserve their rights to object to the allowance of any administrative expense, including without limitation any professional fees and expenses.

The Senior Facilities Agent and the Committee will address in good faith the payment of any reasonable and documented

ordinary course administrative expenses that are incurred prior to the Relief Date which are not included in the Budget, to the extent such payments in the aggregate do not exceed the total amount of Budget expenses (excluding professional fees but including any permitted variance).

The administrative expense budget for the period after the Relief Date shall be negotiated and agreed upon in good faith but shall not extend beyond the date of sale of the Ships except as otherwise may be needed to (i) effectuate the transfer of title of, and security in any of the Ships and satisfy the obligations of the estates related thereto, if any, and (ii) fund the Litigation Loan (as defined herein).

For the avoidance of doubt, except as expressly set forth herein, no such payment nor any other terms of the Agreement shall affect the Senior Facilities Lenders' rights in respect of Cash Collateral or under the Cash Collateral Orders, including, without limitation, their rights to adequate protection as set forth in the Cash Collateral Orders and any superpriority administrative claim or adequate protection lien granted thereunder.

Distributions to
Unsecured Creditors:

If any Relief is granted or occurs, the Senior Facilities Agent shall pay into an escrow reserve an aggregate amount of \$1.7 million from the first proceeds of the Disposition of the Ships (the "Distribution Amount"). A pro rata portion (based on the claims pool in respect of each Debtor) of the Distribution Amount shall be paid into the escrow reserve upon the Disposition of each Ship. The Distribution Agent for Trade Creditors of ONAV shall be paid pursuant to a mechanism to be agreed.

The Senior Facilities Agent agrees that the Distribution Amount shall be used to pay fifty-five percent (55%) (up to a cap of \$1.7 million) of the amount of the allowed or undisputed claims of Trade Creditors, on a Debtor-by-Debtor basis.

As used herein, the term "Trade Creditors" shall mean non-insider creditors holding prepetition claims which are allowed in the Cases other than (a) institutional lenders that have financed the construction of vessels of the Debtors' affiliates for which one or more of the Debtors have provided a guaranty of repayment, and (b) the Junior Lenders and the Senior Facilities Lenders.

The Senior Facilities Lenders will be subrogated to the claims of the Trade Creditors to the extent of the Distribution Amount paid to the Trade Creditors; provided, that the subrogation claim of the Senior Facilities Lenders' against each Debtor shall be subordinated to the prior payment in full of all allowed claims of the Trade Creditors against such Debtor (taking account of the Distribution Amount). For avoidance of doubt, Trade Creditors shall not be entitled to receive more than one hundred percent (100%) of their allowed claims.

As used herein, "Disposition" shall mean any sale, conveyance, or assignment (whether by way of private or public sale, court auction or assignment or otherwise) of the Ships or refinancing of the Senior Facilities Obligations or warehousing or similar transaction in respect of the Ships.

Amounts required to be paid directly to Trade Creditors on account of their prepetition claims in connection with a Disposition of the Ships brought in any foreign court proceedings shall reduce the Distribution Amount for the creditors of the estate to which such Ship belongs on a dollar for dollar basis.

Deficiency Claim:

Nothing in this agreement shall be deemed a waiver by the Senior Facilities Agent of the Senior Facilities Lenders' deficiency claim, if any, and such claim shall be entitled to distribution on a pro rata basis with all other allowed unsecured claims against the estates.

Junior Lenders:

The Committee will support a separate agreement between the Senior Facilities Agent and the Junior Lenders pursuant to which the Junior Lenders agree to support the Motions or a Liquidating Plan, so long as such support is not inconsistent with this Agreement and the Committee's fiduciary responsibilities.

Continuation of
Committee in Chapter 7:

The Senior Facilities Agent agrees to support the continuation of the Committee in Chapter 7 pursuant to Section 705(a) of the Bankruptcy Code and payment of its reasonable professionals' fees pursuant to Section 105(a) of the Bankruptcy Code.²

² See Sable, Makoroff & Gusky, P.C. v. White (In re Lyons Transportation Lines, Inc.), 162 B.R. 460 (Bankr. W.D. Pa. 1994).

Litigation Fund:

If, and reasonably promptly after, any Relief is granted or occurs, the Senior Facilities Lenders, whether through the Senior Facilities Agent or otherwise, will make an initial loan of \$300,000.00 (on commercially reasonable and customary terms to be agreed, including entry of a satisfactory Bankruptcy Court order approving such financing and other documentation to be agreed (the "Litigation Loan") to the Chapter 7 trustee (or such other entity to be agreed) to fund estate litigation against third parties. The proceeds of the Litigation Loan shall not be used to investigate or prosecute (a) claims against the Senior Facilities Agent or the Senior Facilities Lenders or (b) challenges to Senior Facilities Agent's or Senior Facilities Lenders' claims or liens, or to their other interests in any of the property of the Debtors' estates. The first proceeds of any litigation recoveries shall be used to repay the Litigation Loan on terms to be agreed, until the Litigation Loan is repaid in full. Upon full or partial repayment of the Litigation Loan (or at such other time agreed to by the Senior Facilities Lenders in their discretion), up to another \$100,000 of the Litigation Loan (or such other amount agreed to by the Senior Facilities Lenders) will be readvanced by the Senior Facilities Lenders (in their discretion) on the same terms and conditions, and the loan documentation shall so provide. Nothing herein shall constitute a waiver of any claims or causes of action which are the property of the Senior Facilities Agent or the Senior Facilities Lenders, which shall be retained by them.

Claims Review Process:

The Committee will support the Senior Facilities Agent in a robust claims review process undertaken in good faith consistent with the provisions of the Bankruptcy Code and the responsibilities and professional conduct of the estate fiduciaries and the professionals of the parties in interest involved, pursuant to which claims will be examined and insider claims scrutinized. For avoidance of doubt, the Senior Facilities Agent is a party in interest with respect to all claims.

Governing Law:

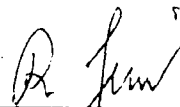

This Agreement shall be governed by the internal laws of the State of New York.

Jurisdiction:

Disputes shall be resolved by the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

HSH Nordbank AG, as Senior Facilities
Agent on behalf of the Senior Facilities
Lenders

By:

	
Name: MICHAEL GUNTHER	MICHAEL SMITH
Title: COUNTRER	SLITH

Official Committee of Unsecured Creditors
of Omega Navigation Enterprises, Inc., et al.

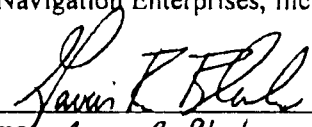
By:

Name: _____
Title: _____

HSH Nordbank AG, as Senior Facilities
Agent on behalf of the Senior Facilities
Lenders

By: _____
Name:
Title:

Official Committee of Unsecured Creditors
of Omega Navigation Enterprises, Inc., et al.

By: 
Name: Gavin R Black
Title: UNSECURED CREDITORS COMMITTEE CHAIRMAN