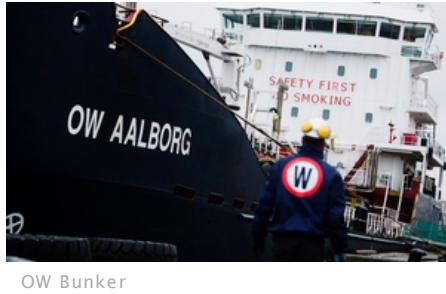


# Lawyers flooded with calls from parties seeking to protect themselves

**The collapse of OW Bunker has seen physical suppliers, as well as bunker traders and brokers, pressure shipowners and charterers to cough up payment for monies owed by the bankrupt giant under threat of vessel arrests**



OW Bunker

The question that has occupied the shipping industry this week is whether physical suppliers can take legal action against vessels they supplied bunkers to through OW Bunker.

Maritime lawyers across the globe tell TradeWinds they have been flooded with calls from all sides seeking advice as to what their legal position is in the OW bankruptcy saga and how they can protect themselves, their assets or their outstanding debts.

Bunker industry creditors are known to be retaining lawyers in arrest-friendly jurisdictions as bunker supply invoices left open when OW filed insolvency papers in the Danish town of Aalborg go unpaid.

Lawyers say bunker industry players who have not received payment are monitoring the fleets of owners and charterers for potential arrests in friendly jurisdictions.

So just how vulnerable are shipowners and charterers to OW's unpaid bills?

The level of exposure faced by shipowners or charterers who purchased bunkers through OW depends on what legal systems are used in the jurisdictions where actions are commenced, TradeWinds has learned.

In the US, the maritime legal regime puts providers of necessities like bunkers at the top of the priority list when it comes to shipping industry claims.

And while OW is widely predicted to file for Chapter 15 bankruptcy protection in the US, which recognises foreign insolvency proceedings and helps extend protection from creditors in US courts, the legal shield will not extend to owners and charters, says Stephen Simms, a lawyer at Baltimore law firm Simms Showers who represents bunker companies in shipping disputes.

He is already representing two bunker industry clients in the same situation.

US lawyers say the situation threatens to put shipowners in a holding pattern, waiting to figure out who they should pay amid the uncertainty, which could impact incoming payments to the OW estate in the bankruptcy court.

The owners are finding themselves in a quandary over demands by bunker suppliers to be paid, sources in the US market confirm.

"Physical suppliers are asking owners to pay them directly or threatening to arrest the ships for maritime claims," said one broker. "They want to divert payments so as not to get caught up in Chapter 11 issues but people are not sure that that is kosher."

The situation is different in other popular arrest-friendly jurisdictions such as Singapore, South Africa and Gibraltar where the legal systems are based on English law.

Here, contract law comes into play and maritime liens cannot be attached to vessels by suppliers. They enjoy no priority claims.

Lawyers in Singapore and South Africa say that the physical suppliers left unpaid by OW would not be able to arrest ships because no contract exists between the ship's owner or charterer and the bunker supplier. Each of these parties has contracts only with OW and it is against that company that they would have to claim.

However, some lawyers note that the physical suppliers could exploit a legal loophole by framing their claim under the context of tort. Under tort law, a claim can be lodged against a party with whom no contract exists if it can be proven that damages have occurred because of that party's negligence.

The key would therefore be for the bunker supplier to prove that OW was acting purely as an agent for the owner or charterer of a vessel. In this case, the courts would have to determine whether the ownership of the bunkers had passed on to the ship's owner or charterer based on who has the authority to give the consent for it to be consumed.

Cape Town-based lawyer Alan Goldberg of maritime law firm Alan Goldberg & Associates cautions that filing a tort claim will be challenging for any supplier who has a contract with OW.

"It is very hard to convince a court to hear a case framed in the context of tort when a contractual relationship exists. You can't just cherry-pick," Goldberg explained.

Lawyers in Singapore agreed with Goldberg that filing a claim under tort law, while not impossible, would not be easy.

"'Confused' is the best word that comes to mind in describing owners right now," a shipbroker said.

"They sympathise with the physical suppliers but have no direct connection with them. At the same time, they don't want to risk vessel arrests. They're scrambling to their lawyers, asking them what they should do."

One owner confirms this, saying his company has retained Danish counsel.

"We don't have a lot of exposure, just a couple of ships. We have counsel acting as a traffic cop, directing us to clear our trades. We feel OK about where we are."

But he also reckons that the story may just be unfolding. "Where you could see a big issue is a knock-on effect from suppliers who had exposure to OW. This will take some time to come out, but we are on it," he said.

The situation shows how the Danish giant's sudden descent into bankruptcy has sent shockwaves throughout the bunker supply chain, where a single fuel delivery could involve numerous parties but OW's name is on the invoice.

"Depending on the deal, you might have two or three brokers and traders involved and then a physical supplier, and when you look at it, there will be an invoice from OW to the ultimate customer," said Simms.

The chief executive of a major Singapore-based shipowner told TradeWinds this week that the repercussions of the OW collapse will be huge and have not really been appreciated by many people yet.

"We are only just seeing the first wave of demands to owners from physical suppliers but everyone is waiting to see what action the administrator will take. If this isn't sorted out quickly, there are likely to be a wave of ship arrests by suppliers who haven't got payment from OW Bunker. But if the money isn't there, it's hard to see an easy solution."

A Singapore-based lawyer summed up his expectations more succinctly. "It is going to be messy, really messy," he said.

**[For more on the OW Bunker drama, click here.](#)**

BY JONATHAN BOONZAIR SINGAPORE JOE BRADY STAMFORD ERIC MARTIN STAMFORD 14 November 2014, 01:00 GMT