Seward & Kissel LLP

Maritime Practice

2017 Year in Review

To Our Clients & Friends

2017 was a standout year for Seward & Kissel, and we are thankful for all of the support received from our friends and clients. Among numerous other transactions, Seward & Kissel helped a longtime client become the largest shipping company on a U.S. stock exchange, litigated momentous questions of maritime law across the country, and negotiated the formation of one of the world's largest shipping companies. This will not surprise anyone who knows the maritime space. For years, Seward & Kissel's ability to serve a range of industry stakeholders—shipowners, lenders, private equity investors—across a range of legal issues—from bankruptcy to capital markets—has given it a leading role in a majority of the biggest maritime deals.

2017 was also an eventful year in the maritime industry. The industry continued to suffer from the oversupply of tonnage and the effects of the financial crisis of nearly a decade ago, including the tighter credit that followed. Low oil prices, although finishing higher for the year, continued to put enormous pressure on the offshore drilling and services sectors. The year saw several major restructurings and the continued withdrawal of traditional sources of shipping finance, and difficulties in getting relief to the residents of Puerto Rico following Hurricane Maria had some in Washington questioning, rightfully or wrongfully, the merits of the Jones Act.

The year also offered hope that some downward trends have begun to turn around. Dry bulk showed improvement as demand firmed and owners resisted ordering new vessels and reaped the rewards of earlier restructurings and scrapping programs. Consolidation continued, most notably in the tanker sector, and the continued withdrawal of traditional shipping lenders opened up new sources of capital in the form of Chinese and private equity-backed lenders and lessors.

So what does the future hold for maritime and shipping finance? Will traditional lenders continue their retreat from shipping? Will China's One Belt and One Road Initiative continue that country's expansion in shipping finance? Will private equity funds accelerate the harvest of their equity investments in shipping and will this lead to new investment and further consolidation? Will United States public equity markets continue their upward march and will this lead to an improved public appetite for shipping equities? Will oil prices recover enough to bring badly needed stability to the offshore drilling and services sectors? Will new environmental requirements lead to increases in investment, scrapping, and newbuild orders? Will continuing uncertainty over Brexit affect London's position as a major shipping finance and insurance center? Will the opening of new areas for offshore drilling in the United States have any effect on the beleaguered offshore drilling and services sectors in the United States? Will populist concerns over free trade and globalization continue to affect policy, or be assuaged, and what will be the effect on international shipping?

The team at Seward & Kissel is here to help guide our clients through these tumultuous times. Our unique insight and capabilities have been honed through decades of experience in both good and bad markets and as a result of our being involved in all facets of the maritime industry, including shipping finance, public offerings and private placements, private equity investments, restructurings, litigation and bankruptcy, purchase and sale transactions, mergers and acquisitions, and from our having acted in varied capacities in each of these types of transactions.

We are pleased that we have had the opportunity to provide guidance to our clients in both good and difficult times, and look forward to continuing to assist our clients as the maritime industry finds its bearings and charts its course for 2018 and beyond.

Secured Lender Prevails in O.W. Bunker Litigations

Since November 2014, Seward & Kissel has represented ING Bank N.V., as security agent for a syndicate of lenders, in over fifty proceedings across the United States arising out of the global collapse of the O.W. Bunker group, a multinational provider of marine fuels. ING has asserted claims as assignee of O.W. Bunker entities that had contracted with vessel owners and charterers for the supply of fuel to their ships prior to the O.W. Bunker group's collapse.

In many of these proceedings, both ING and third-party physical suppliers retained as subcontractors by O.W. Bunker entities for the purchase and delivery of fuel have asserted competing claims under the Commercial Instruments and Maritime Lien Act, 46 U.S.C. § 31342 ("CIMLA"). That statute provides a maritime lien on a vessel to "a person providing necessaries to [the] vessel on the order of the owner or a person authorized by the owner. . ." 46 U.S.C. § 31342(a). The district courts in these actions have thus needed to determine who "provided" necessaries upon the owner's order (and thus who has the lien) when there existed a supply chain involving multiple contractors and subcontractors.

Since late 2014, Seward & Kissel has obtained favorable results in the vast majority of district court decisions on this issue to date, which have found that the physical supplier did not provide fuel "on the order of the owner or a person authorized by the owner," and therefore did not have a lien under CIMLA. For example, in the Southern District of New York, Seward & Kissel obtained summary judgment for ING on the physical supplier's lien claim in separate actions pending before District Judges Katherine B. Forrest and Valerie E. Caproni. *See O'Rourke Marine Servs. L.P., L.L.P. v. M/V Cosco Haifa*, 179 F. Supp. 3d 333(S.D.N.Y. 2016); *Clearlake Shipping Pte Ltd v. O.W. Bunker (Switz.) SA*, 239 F. Supp. 3d 674 (S.D.N.Y. 2017) (omnibus opinion issued in related "test cases"). Further, in September 2016, Seward & Kissel obtained a victory for ING following trial in the Southern District of Alabama, which found that ING, as assignee of the O.W. Bunker contracting entity under the financing documents, held the maritime lien under CIMLA, whereas the physical supplier did not. *See Barcliff, LLC v. M/V Deep Blue*, No. 14-cv-0590, 2016 U.S. Dist. LEXIS 133253 (S.D. Ala. Sep. 28, 2016). Likewise, in December 2016, the Southern District of Texas granted summary judgment to ING on its maritime lien claim and dismissed the physical supplier's competing claim. *See NuStar Energy Servs., Inc. v. M/V Cosco Auckland*, No. 14-cv-3648, 2016 U.S. Dist. LEXIS 181539, at *17-18 (S.D. Tex. Dec. 1, 2016).

At present, there are over a dozen O.W. Bunker-related matters pending on appeal in the Second, Fifth, Ninth, and Eleventh Circuits, including the actions discussed above. Seward & Kissel represents ING in eleven of these appellate proceedings. Most recently, the Eleventh Circuit in *Barcliff, LLC v. M/V Deep Blue* became the first appellate court to issue a ruling on the merits of the competing lien claims by ING and the physical supplier in these cases. That Court issued a detailed opinion affirming the finding of the district court that ING, and not the physical supplier, held the lien against the vessel. *See Barcliff, LLC v. M/V Deep Blue*, 876 F.3d 1063 (11th Cir. 2017). Further developments are anticipated in 2018.

2017 Changes to United States Sanctions Laws

2017 saw significant changes to United States sanctions laws against several countries:

Russia

In August 2017, President Trump signed the Countering America's Adversaries Through Sanctions Act ("CAATSA"), which codified certain pre-existing sanctions against Russia, imposed new sanctions against certain classes of Russians (such as those identified as having undermined United States cybersecurity), and created a mechanism for Congressional review before the President can ease sanctions against Russia. CAATSA also tightened the pre-existing sanctions targeting Russia's financial, energy, and defense sectors by reducing the maturity periods in which United States persons can provide financing to entities subject to such sanctions, and tightened sanctions with respect to Russian deepwater, Arctic offshore, and shale projects.

Iran

CAATSA did not alter the Iran Deal – the Joint Comprehensive Plan of Action ("JCPOA") – which suspended a number of nuclear-related sanctions on Iran. On October 13, 2017, President Trump announced he would not certify Iran's compliance with the JCPOA. This did not withdraw the United States from the JCPOA or reinstate any sanctions. However, President Trump must periodically renew sanctions waivers and his refusal to do so could result in the reinstatement of certain sanctions suspended under the JCPOA.

Sudan

On October 12, 2017, the United States Office of Foreign Assets Control ("OFAC") announced it was terminating nearly all United States sanctions against Sudan. This followed the initial suspension of most sanctions under the Sudanese Sanctions Regulations ("SSR") in January 2017, pursuant to a general license provided for under an Obama Administration executive order. United States persons may now engage in transactions previously prohibited under the SSR, with certain narrow exceptions.

Cuba

In June 2017, President Trump announced his intention to roll back measures aimed at easing the Cuba embargo. In November 2017, OFAC and the Department of Commerce published amended regulations adding limitations on travel to Cuba and new restrictions on dealings with Cuban military, intelligence, and security services.

North Korea

In September 2017, President Trump issued an executive order that significantly expands United States sanctions by blocking the property of several classes of North Koreans, blocking funds that pass through foreign bank accounts controlled by North Koreans, and prohibiting vessels that have traveled to North Korea in the previous 180 days from entering the United States.

United States Tax Reform Largely Spares the Shipping Industry

On December 22, 2017, President Trump signed the Tax Cuts and Jobs Act (the "Act")[1], which makes significant changes to the United States federal income tax system. Although the shipping industry largely avoided wholesale changes to the United States federal income tax provisions applicable to its operations, there are several provisions that could impact the industry.

CORPORATE TAX REFORM AND THE CFC RULES

On an overall basis, the Act moves the United States corporate income tax system closer to a territorial tax system, with new protections against transferring earnings offshore (often referred to as "base erosion"). The corporate tax rate is reduced from 35% to 21% and most offshore earnings can be repatriated to domestic corporations without the imposition of tax.

In order to accomplish these changes, substantial modifications are made to the "controlled foreign corporation" ("CFC") rules, which often apply to foreign shipping companies controlled by United States persons. Very generally, the "controlled foreign corporation" rules require a "United States Shareholder"[2] to include in income his or her pro rata share of certain types of income ("Subpart F income") earned by a CFC[3] regardless of whether such amounts are distributed. In addition, certain gains on the sale of stock of a CFC by a United States Shareholder are treated as dividend income rather than as capital gains.

A number of changes were made to the CFC rules that could impact the shipping industry.

First, United States Shareholders of a CFC will be currently taxed at the end of 2017 on their pro rata share of the CFC's untaxed and undistributed offshore earnings (regardless of whether such amounts are distributed). Under prior law, these earnings could be deferred offshore indefinitely and would only be taxed when repatriated to the United States. While the objective of this deemed distribution of previously untaxed earnings is to incentivize a CFC to repatriate such earnings, whether this is commercially possible in the case of shipping CFCs will depend upon the terms of ship financings to which the CFC may be subject. The earnings are taxed at an 8% rate for amounts reinvested offshore and a 15.5% rate for earnings invested in cash or other liquid assets. As a result, United States Shareholders of foreign shipping companies that are CFCs will be currently subject to tax on undistributed, untaxed earnings of those CFCs. However, such amounts will not be taxed again when actually distributed to the shareholder.

Second, the Act treats the annual income of a CFC in excess of 10% of the adjusted tax basis of its tangible property as Subpart F income and subjects such amounts to current taxation in the hands of a United States Shareholder. In the case of a domestic corporation that is a United States Shareholder, only 50% of this amount is subject to taxation. Although this provision is aimed at domestic corporations that use offshore holding companies to hold intangible assets, it is possible that a CFC in the shipping industry with substantial returns on investment in a particular year could be subject to this provision.

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Third, the Act modifies the definition of United States Shareholder to include United States persons who own 10% or more of the value of a CFC's stock (in addition to those owning 10% or more of the voting stock of a CFC). As a result, United States persons who have structured voting rights in a foreign corporation differently from economic rights in order to avoid CFC status will need to revisit their corporate structures.

Fourth, the Act modifies the definition of a CFC to eliminate the 30-day uninterrupted ownership requirement before CFC status can be triggered. This means that CFC status can be triggered for a foreign corporation if United States Shareholders own more than 50% of the value or vote of its stock for as little as a single day of the tax year.

SECTION 955

The Act also repealed Section 955, which permitted foreign shipping corporations to defer the recognition of taxable income on earnings from 1976 to 1986 that were reinvested in shipping. Under the Act, any remaining deferred amounts are required to be included in income on December 31, 2017, under the rules for current inclusion of deferred CFC income described above.

PROVISIONS NOT INCLUDED

Under an earlier draft of the legislation, foreign incorporated cruise companies operating in the United States would have been subject to regular United States corporate income tax on the portion of their profits attributable to days that a vessel spent in United States territorial waters. This provision was not included in the final legislation.

In addition, a permanent extension of Section 954(c)(6) which permits the payment of dividends between related CFCs without triggering inclusion of such amounts as Subpart F income was not included in the final draft despite being included in both the House and Senate Bills. Under current law, Section 954(c)(6) is scheduled to expire at the end of 2019.

SUMMARY

In conclusion, the Act makes significant changes to the provisions applicable to corporations and particularly substantial United States shareholders of foreign corporations but does not take aim directly at the shipping industry.

[1] As a result of a technical budgetary issue, the official name of the legislation was changed to "Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018."

[2] Prior to the Act, a United States Shareholder was a United States person that owns 10% or more of the voting stock of a CFC. As indicated below, the Act changes the meaning of this term.

[3] A foreign corporation is a CFC if more than 50% of the vote or value of its stock is owned by one or more United States Shareholders.

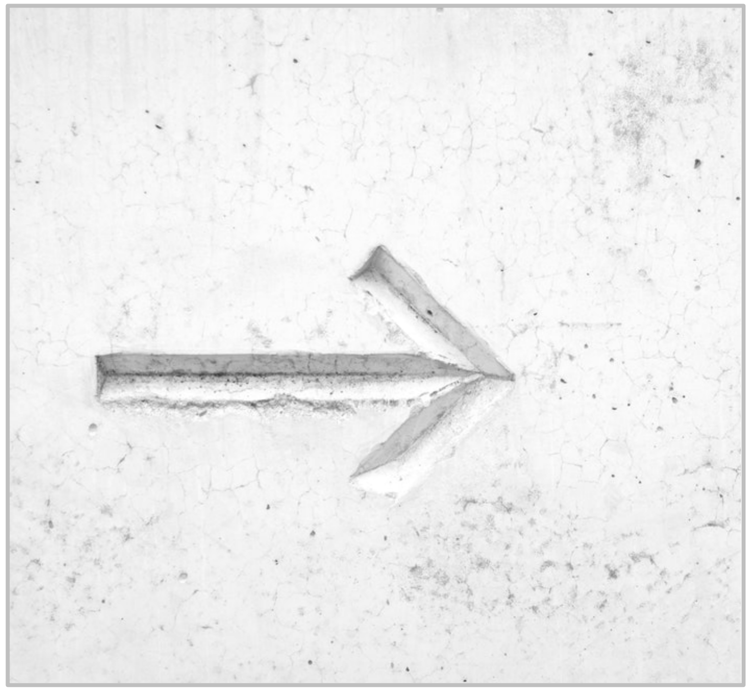
Representation and Warranty Insurance: Pros and Cons

As anyone who has ever been involved in an M&A transaction knows, the negotiation of representations and warranties and related indemnification provisions can be contentious and time-consuming. In recent years, however, representation and warranty ("R&W") insurance has become a more widely-used tool to overcome such hurdles and facilitate deals.

In most M&A transactions, the seller of a business makes various representations and warranties about the business to the buyer. R&W insurance shifts the responsibility for all or most of a seller's representations and warranties to a third-party insurer, which can benefit both buyers and sellers. It is structured like a typical insurance policy, with deductibles, caps, and exclusions. Policy premiums are deal specific and may vary depending on the type of transaction and industry involved, but generally range between 2% and 4% of the coverage amount. Policies can be structured either as seller-side or buyer-side, depending on who is purchasing the coverage. In both seller-side and buyer-side policies, a one-time premium is typically paid at the closing of a transaction. Determining who pays the premium is an issue that gets negotiated between buyers and sellers. Most insurers will also require a "retention" (similar to a deductible), which typically ranges between 1% and 2% of the transaction value. There is also a non-refundable underwriting fee in addition to the premium, which may range from $10,000 to $50,000.

For buyers, foregoing indemnification from sellers in reliance on R&W insurance can enhance the competitiveness of their offers in a sale. In addition, R&W insurance can benefit buyers by, among other things, offering longer survival periods for representations and warranties and more coverage than could normally be obtained from sellers, reducing recovery concerns (especially when the transaction involves distressed or foreign companies) and allowing for recourse when post-closing protections would otherwise be unavailable (such as in public company deals or a seller bankruptcy). There is an increasing use of R&W insurance by buyers in public-style deals (i.e., where sellers have no post-closing liability), although in those instances pricing and other terms may be less favorable if sellers have no liability after closing.

For sellers, the advantages of R&W insurance include reducing or eliminating their post-closing exposure for breaches of representations and warranties, permitting cleaner exits from a business and certainty as to the sale proceeds they will receive (without the need for sizeable escrows or similar mechanisms), and potentially expediting the sale process as a result.



There are, of course, limitations on the benefits of R&W insurance that buyers and sellers should take into account. For example, obtaining R&W insurance may add additional time to a sale process (although policies can often be put in place within a week or so), and not all losses are covered by R&W insurance policies. Common exclusions include liability for environmental claims, violations of foreign corrupt practices and other anti-bribery laws, fraud, and matters disclosed in diligence. However, the benefits of such coverage can oftentimes outweigh these limitations.

The maturation of R&W insurance in the M&A landscape provides buyers and sellers with a valuable tool to manage risk in a cost effective manner and facilitate deals. When considering an M&A transaction, you should consult with your Seward & Kissel relationship attorney to determine whether R&W insurance is appropriate for your transaction.

Term Loan B as a Source of Liquidity for Shipping

One realm of the financing world that has been around for a long time but has been little utilized to date by shipping companies is the Term Loan B market. This, however, is starting to change. 2017 witnessed at least three successful issuances of Term Loans B by shipping companies, namely, Dynagas LNG Partners, Navios Maritime Partners and International Seaways. Seward & Kissel regularly advises on these types of transactions.

Whereas some traditional bank debt participants, including many bank lenders in Europe, have publicly announced an exit from the ship finance market, the Term Loan B market is flush with market participants. Funds with a mandate to invest in collateralized loan obligations ("CLO Funds") continue to be the active participants of the Term Loan B market (with new issuances by CLO Funds in 2017 reaching a near-historic high). Institutional investors, such as insurance companies and asset managers looking for a return in a low-interest market environment, have also helped fuel the Term Loan B market.

From a ship owner's perspective, perhaps the most prominent benefit of the Term Loan B is the low amortization requirement (as low as 1% of the principal loan amount per annum), compared to a traditional bilateral or club bank debt deal. This helps lower break-even points for ship owners in a down market. Some of the Term Loan B issuances have a bond-like covenant package: few or no financial maintenance covenant requirements and negative covenants that are more accommodating to the borrower's needs. Because the most active users of the Term Loan B market are the private equity funds financing their merger and acquisition activities, the Term Loan B market is often at the forefront of the more borrower-friendly terms being tested in the loan market. For example, in the Term Loan B market, a borrower's ability to buy back its own debt in the open market at a discount is a fairly commonly accepted right of the borrower as well as built-in rights to extend the loan maturity or to refinance (partially or wholly) a loan tranche with a simple amendment to the existing credit documentation. But, of course, some of the specific terms of the loan will depend on the usual credit underwriting standards, such as the long-term revenue prospects of the borrower.

Because the Term Loan B is often widely syndicated to a large group of market participants, the deal process typically involves more time and costs, akin to a bond issuance. The borrower will need to work with the underwriters to assemble marketing materials and to conduct road shows and meetings with individual investors. Because of the time and costs involved with those efforts, the Term Loan B may make sense only for an issuance of a certain size (and some of the CLO Funds have internal requirements to invest only in deals of a certain size).

Due to the syndicated nature of a Term Loan B, soliciting amendment or waiver consents from the lenders may require more effort (and hence involve greater costs) compared to a bilateral or club deal, and obtaining unanimity from the lender group is virtually impossible. Therefore, well-negotiated documentation is of paramount importance from a borrower's perspective.

United States Implements "T+2" Securities Settlement Cycle

After years of contemplation, in September 2017, the United States public capital markets came into conformity with the predominant standard settlement period around the world for most broker-dealer transactions – two business days following the trade date, or "T+2" settlement. This marks the first change to the standard settlement cycle in the United States public capital markets in 23 years, when the United States Securities and Exchange Commission (the "SEC") had by rule reduced the settlement cycle from five business days ("T+5") to three business days ("T+3"). In its press release announcing the change, the SEC pointed to technology improvements, calling the T+3 settlement period "outdated." According to the SEC, the shortened settlement period is intended to increase efficiency while reducing risk for market participants.

The move to a "T+2" settlement cycle was officially proposed by the SEC on September 28, 2016, following the October 2014 harmonization of the "T+2" settlement cycle for securities transactions in most European markets. At the time, Liechtenstein remained the only European market that had not yet migrated, or set a migration date, to "T+2" settlement. On March 22, 2017, the SEC formally adopted an amendment to its rules to implement "T+2" settlement, with broker-dealer firms required to comply commencing September 5, 2017.

The SEC's amended rule prohibits a broker-dealer from effecting the purchase or sale of a security where the payment of funds and delivery of securities is later than "T+2," where "T" is the trade date (or pricing date, in the case of priced underwritten offerings), unless expressly agreed upon by the parties. For example, if a trade is conducted on a securities exchange during the trading day on Monday, then settlement of that trade must occur on Wednesday, which is the second business day after Monday (assuming that no holidays intervene).

The change has put some additional pressure on documentation intensive transactions, such as underwritten public offerings, as the broker-dealer firms must assure that they receive payment no later than two business days after the transaction is priced.

Under SEC rules, if a transaction is priced 30 minutes or more after the close of trading on the public markets (*i.e.,* after 4:30pm New York time on the NYSE or Nasdaq), then "T" is considered to occur on the next trading day, effectively allowing for an extra day for the logistics of preparing, finalizing, executing and delivering closing documentation. While the parties may agree to a longer settlement period by contract, traditionally, closings in connection with these transactions have tracked the standard settlement cycle. As such, underwriters and other deal participants have begun to accelerate the preparation of closing documentation, much of which had been previously delayed until pricing was assured. In the context of offerings conducted by international shipping and offshore companies, the time factor associated with assembling documents required for closings is even more significant given the disparate geographic location of parties, registries and other governmental agencies.

Even while the United States had a "T+3" settlement cycle for public securities transactions, it was not unusual for non-public transactions, particularly high-yield debt offerings conducted under the SEC's Rule 144A, to be settled on a more customized basis, usually "T+5" (particularly in transactions with complex collateral and security structures requiring more extensive negotiation and documentation). The move to "T+2" in the public markets may lead to a shortening of settlement cycles in private transactions as well.

Things to Consider About Vessel Sale-Leasebacks

Perhaps the biggest shipping finance trend in 2017 was the continued growth of alternative finance, with leasing companies, many of them in China, filling much of the gap left by traditional lenders cutting back or exiting the sector. High advance rates and low implicit interest rates made Chinese sale-leaseback transactions difficult for vessel owners to resist. Private equity backed lessors also joined the rush, but their higher return requirements sometimes limited them to transactions that Chinese lessors found too challenging.

Many leases contain terms intended to make them more like loans, including hell-or-high-water payment obligations and fixed-price purchase obligations. But leases are not loans, and regardless of their attractiveness, sale-leasebacks expose lessors and lessees to risks that are different from those faced by secured lenders and borrowers.

Leases can be structured as anything from an operating lease, in which a lessor owns a vessel and makes it available to a lessee under a bareboat charter for a period of time, to a financing, in which the lessor effectively sells the vessel to the lessee and agrees to accept payment in future installments. Where a lease falls on this spectrum determines the rights of the lessor and the lessee. Certain terms, such as fixed-price purchase obligations, make leases more like financings, while others, such as return obligations with market-price purchase options, make them more like operating leases.

A United States bankruptcy proceeding can have a significant impact on a vessel lease and is easy to access. A party need only have assets in the United States, such as a retainer paid to its lawyers, to qualify for Chapter 11 bankruptcy, and regardless of the law chosen by the parties, a bankruptcy court will generally apply its own principles of equity when deciding how to characterize a lease. A lease that is a disguised financing can be re-characterized as a loan in a Chapter 11 bankruptcy of the lessee. This can result in the lessor being treated as an unsecured creditor of the lessee unless the lessor has taken appropriate steps, if available, to protect its interest in the vessel. A lease that is more like an operating lease can be rejected, or terminated, in the Chapter 11 bankruptcy of the lessor, leaving the lessee without the use of the vessel and an unsecured claim for damages against the lessor. An operating lessee can take steps to protect itself against the possible bankruptcy of a lessor,

including by insisting that the lessor be a bankruptcy-remote special purpose vehicle. An operating lease can also be rejected in the Chapter 11 bankruptcy of the lessee, resulting in the return of the vessel to the lessor and the lessor having an unsecured claim for damages against the lessee.

Leases frequently contain terms not seen in loan agreements. A lessor may, for example, insist on a hell-or-high-water clause obligating the lessee to pay hire regardless of the circumstances. In some cases, this may be appropriate: for example, a defect in a vessel should not release a lessee from its obligation to pay hire under a finance lease. In other cases, it may not be: for example, a lessee may be justified in withholding hire if a vessel is arrested as the result of claims against the lessor that are unrelated to the lease.

Leases often contain provisions entitling a lessor, upon the occurrence of an event of default, to terminate the lease and demand stipulated loss value. The amount of stipulated loss value at any time might equal the sum of all unpaid hire, including future hire and implicit interest. A court applying New York law, including a bankruptcy court, might be reluctant to enforce a stipulated loss value provision if it does not reflect a reasonable estimate of the lessor's expected damages following an event of default. In addition, lessees will usually want quiet enjoyment rights and the lessor to agree to remove liens created by the lessor that could interfere with the lessee's use of the vessel.

Sale-leasebacks can also have tax and accounting implications that are different from those associated with loans. For example, sale-leasebacks may be subject to sales and use taxes depending on the location of the vessel and the jurisdiction of the parties at the time of the sale. It is best to consult an accountant about the accounting treatment of any transaction.

Sale-leaseback transactions can offer owners and finance providers a useful alternative to secured loans, but parties should consider the differences and the relative advantages and disadvantages of each before jumping in.

Notes of Interest

Brazil Reverses Field – 2016 Appeals Court Ruling Liberian Mortgage Unenforceable Overturned

In 2016, in a highly controversial ruling, the Brazilian courts stunned the maritime finance world when an appeals court in São Paulo, Brazil, issued a judgment declaring that a mortgage in favor of the Nordic Trustee over a Liberian flag floating production storage and offloading (FPSO) unit would not be recognized as a valid mortgage under Brazilian law. There was no question that the mortgage was properly executed and recorded under Liberian law. The Brazilian court reasoned, however, that since the mortgage was not registered in a country that had ratified either the Brussels Convention of 1926 for the Unification of Certain Rules of Law Relating to Mortgages and Liens (to which few major maritime countries are party) or the Bustamante Code of 1928 (which covers only certain countries within the Americas), the Brazilian courts did not have the power to enforce a Liberian mortgage. Given the size of the Brazilian market, especially the offshore sector, the decision had a large potential impact, especially on parties holding mortgages recorded in the most prominent international flag states. In addition to Liberia, this would also encompass the Marshall Islands, the Bahamas, Cyprus, Vanuatu and others.

The Nordic Trustee appealed and the Brazilian Superior Court of Justice granted the appeal on November 16, 2017, ultimately recognizing the validity of the mortgage. The Superior Court concluded that under the United Nations Convention on the Law of the Sea, the acts of sovereignty of countries where vessels are registered must be respected and therefore Brazil cannot require existing mortgages on foreign flag vessels to be registered in Brazil. This decision comes as a great relief to owners of, and lenders secured by, countless vessels registered in international flag states that trade in and to Brazilian waters.

Amendments to the Marshall Islands Associations Law

The Republic of the Marshall Islands recently adopted amendments to its Associations Law affecting companies organized in the Marshall Islands, and Seward & Kissel attorneys worked closely with the Marshall Islands corporate registry in the drafting process. The impetus for the amendments on the part of the Marshall Islands corporate registry was a commitment to implement the transparency standards of the Organization for Economic Cooperation and Development (OECD) with respect to the inter-jurisdictional exchange of ownership information for tax purposes. In order to satisfy these OECD standards, the amendments impose new requirements on Marshall Islands companies to obtain and maintain ownership records, and also make certain other modernizing updates to the Associations Law.

Key amendments include:

Beneficial Ownership Records

The amendments introduce a new requirement on Marshall Islands corporations, partnerships, limited partnerships and limited liability companies, other than publicly traded companies, to maintain a record of their ultimate beneficial owners. Previously, a company was obliged to maintain only a record of registered holders, but the new requirement looks through registered ownership to "beneficial owners," which is defined as a natural person who exercises control over the company directly or indirectly, and will generally be deemed to include a holder of more than 25% of the interests in such company. Such beneficial ownership records, as well as other corporate records such as accounting records and underlying documentation, will generally be maintained by the company but must be provided to the registrar upon demand. For companies incorporated before November 14, 2017, there is a grace period for compliance until November 9, 2018, while companies incorporated after November 14, 2017 must comply immediately.

Shareholder Actions by Majority Written Consent

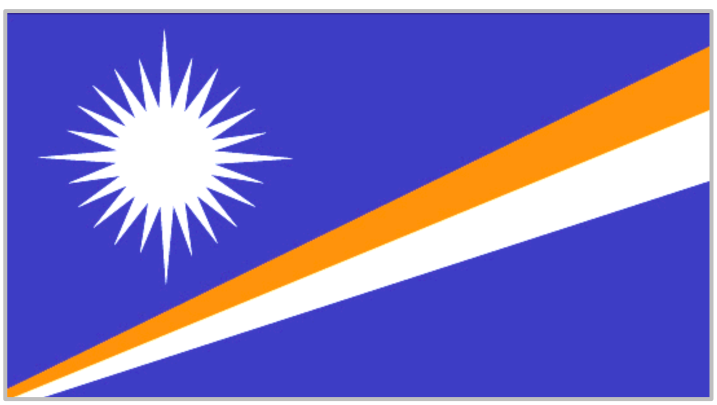
Unless otherwise provided in the articles of incorporation, shareholders of a corporation may, without a meeting and without any notice requirement, act by written consent signed by the holders of shares having the minimum number of votes which would be necessary to authorize such action at a meeting of shareholders. Previously, only actions by unanimous written consent of the shareholders were permitted. This change brings Marshall Islands law in line with Delaware's corporate law, and will facilitate certain corporate actions in closely held corporations, but also may weaken a minority shareholder or anti-takeover protection of public companies. Clients whose articles of incorporation do not explicitly address the ability of shareholders to take such action by written consent may wish to consider amending their articles of incorporation to do so.

CONSIDERATION FOR SHARES

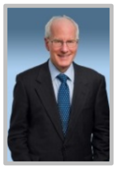
The amendments remove certain limits on the form of consideration which may be accepted as payment for shares by an issuer. For example, an obligation for future payment or services, such as a promissory note, is now acceptable as payment for shares. In addition, corporations are now permitted to issue partly paid shares. One effect of this change will be to facilitate settlement of certain types of transactions and settlement on certain exchanges where previously a work-around such as an escrow arrangement may have been required.

BEARER SHARES

The amendment introduces additional record-keeping requirements for issuers, including publicly traded companies, and holders of bearer shares. Corporations must use all reasonable efforts to maintain a record of holders and beneficial owners of bearer shares, as well as any transfers of bearer shares. Bearer shares will be deemed invalid and must be cancelled by the issuer if such information is not provided by the holder of bearer shares and recorded with the registrar, and transfers of bearer shares are valid only when recorded with the registrar. These stringent requirements render bearer shares in certain ways functionally equivalent to registered shares and should further discourage the issuance of bearer shares, which have been increasingly disfavored in the public markets and by counterparties such as lenders.



Key Contacts



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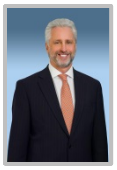

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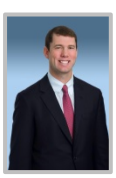

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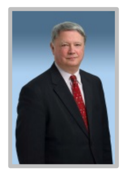

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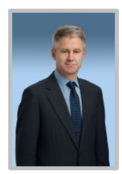

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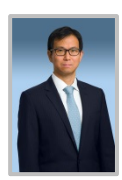

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2017 Highlights

Scorpio Tankers Inc.
Advisor to the company in its
$81.4M Credit Facility

March 2017

Star Bulk Carriers Corp.
U.S. Second Circuit Court of Appeals
affirms dismissal of shareholder
litigation and U.S. Supreme Court
denies review of plaintiff's appeal

April 2017 & November 2017

Ultrapetrol (Bahamas) Limited
Advisor to the company in Chapter 11
and to the Special Committee of
Directors in Restructuring Negotiations
M&A Advisor's Cross-Border
Restructuring Deal of the Year

April 2017

Scorpio Tankers Inc.
Advisor to the company in its
underwritten public offering of
50M shares of common stock

May 2017

Dynagas LNG Partners LP
Advisor to the company and its
affiliates, as Guarantor and Borrowers,
in a $480M Term Loan B Facility

May 2017

Chemical Transportation Group, Inc.
Advisor to the company as seller and
bareboat charterer in an $81M sale-
leaseback of two chemical carriers

June 2017

Compañia Marítima Chilena S.A.
Advisor to the company in its
$19.6M Credit Facility

June 2017

Advisor to **DNB Markets, Inc.**,
as Mandated Lead Arranger, and
DNB Bank ASA, NY Branch, as Facility
Agent and Security Trustee, in a $97M
Term Loan Facility for Dorian LPG Ltd.

June 2017

Diana Containerships Inc.
Advisor to the company as Borrower in a
$35M First-Lien Term Loan Facility and
a $40M Second-Lien Term Loan Facility

July 2017

2017 Highlights

Advisor to **DVB Bank SE**, as Lender, in a $20.1M DIP Financing for and restructuring of $280M in liabilities of **International Shipholding Corporation**

July 2017

Chemical Transportation Group, Inc.
Advisor to the company in its $200M sale of five chemical carriers to Odfjell and the entry of five additional chemical carriers into a new pool

July 2017

Scorpio Tankers Inc.
Advisor to the company in its $1.1B merger with Navig8 Product Tankers Inc.

September 2017

Sterling Ocean Chemical Tankers Inc.
Advisor to the company in its Credit Facilities totaling more than $38M

October 2017

Ship Finance International Limited
Advisor to the company in its $120M early conversion incentive offer made to holders of its $350M aggregate principal amount of 3.25% Senior Unsecured Convertible Notes due 2018

October 2017

TORM plc
Advisor to the company in its direct listing on the Nasdaq Stock Exchange

December 2017

Scorpio Bulkers Inc.
Advisor to the company in its $85.5M Credit Facility

December 2017

The team is said to be **"extraordinarily knowledgeable about ship finance law"** and **"extremely pragmatic"** in the advice it gives. Sources go on to comment: **"We take their advice without hesitation and have good reason to do so because it has always worked well."**

—Chambers Global 2017

One interviewee admires that **"they're practical, efficient and commercially minded. They strike a good balance of protecting our legal interests and commercial aspects."** A satisfied client reports: **"We have never had a case we couldn't get resolved. It is a very good firm."**

—Chambers USA 2017

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