

Claims by ING Bank

About one year before bankruptcy, OW Bunkers and some of its subsidiaries entered into an agreement with ING Bank who acted as agent for a syndicate of lenders to the OW Bunker Group. As part of that agreement, the OW Bunker companies assigned and charged to ING Bank all rights, title and interest in all its receivables, both current and future. On the basis of this assignment ING Bank now vigorously pursue owners and charterers for payment under OW Bunker's invoices.

Whether ING Bank lawfully can claim the purchasers essentially depends on whether the bunker contract contains an assignment clause. If the contract does not contain an assignment clause the claim by ING Bank should be refuted. If the contract contains an assignment clause purchasers should nevertheless seek legal advice to investigate if the assignment is valid. Whether the assignment is valid will depend on the law which governs the contract. If the assignment is valid, ING Bank may have a legitimate claim for payment under an OW Bunker invoice.

It is understood that ING Bank is likely to remain as the named creditor in the ongoing legal action whilst the "mystery buyer" is expected to take on the claims against the owners and operators who have outstanding bunker bills from around the time of OW Bunker's collapse, assuming an assignment to the "mystery buyer" really exists. The information is yet to be confirmed and members are recommended to be even more careful in ascertaining that the correct party is claiming payment when facing a claim under an OW Bunker invoice.

Claims by unpaid physical suppliers

In some jurisdictions bunker suppliers retain a right in the bunkers and/or the vessel until the supplier has been paid. Therefore, to the extent OW Bunkers has not paid physical suppliers, the suppliers may try to pursue the purchasers / vessel owners directly for the debt. The supplier may either try to enforce a so-called "retention of title clause", or bring an action in tort for "conversion". The physical supplier may also try to argue a maritime lien in the vessel.