

O.W. Bunker Update
11/24/15

I. Claim Settlement Motions

- On November 18, 2015, the bankruptcy court presiding over the jointly administered chapter 11 cases of O.W. Bunker North America Inc. (“OWB NA”), O.W. Bunker USA Inc. (“OWB USA”), and their parent company, O.W. Bunker Holding North America Inc. (“OWB Holding”, and together with OWB NA and OWB USA, the “Debtors”), entered several orders granting relief requested by the Debtors to facilitate confirmation of their proposed chapter 11 liquidation plan [Docket No. 1107] (the “Plan”).
- The first order [Docket No. 1164] granted the Debtors’ motion [Docket No. 1132] for approval of settlement agreements resolving the section 503(b)(9) administrative expense claims of various fuel suppliers who claimed to have delivered bunker fuel to the Debtors within 20 days before the commencement of the chapter 11 cases. Under section 503(b)(9) of the U.S. Bankruptcy Code, claims based on goods received by a debtor in the ordinary course of business within 20 days of the commencement of a bankruptcy case are entitled to administrative expense status, which gives such claims priority over general unsecured claims. 11 U.S.C. § 503(b)(9). As summarized below, many of the suppliers’ claims appear to have been resolved by reclassifying the section 503(b)(9) claims as general unsecured claims, and, in most instances, allowing such general unsecured claims. In some instances, however, a supplier was also granted an allowed section 503(b)(9) claim, and in one instance (Martin Energy Services, LLC) the supplier’s general unsecured claim remained subject to objection.

Supplier	Asserted 503(b)(9) Claim	Asserted General Unsecured Claim (“GUC”)	Allowed 503(b)(9) Administrative Expense Claim	Allowed General Unsecured Claim
Mieco Inc.	\$296,137.83	N/A	\$70,000	N/A
Valero Marketing & Supply Company	\$124,388.24	N/A	N/A	\$124,388.24
Shell Trading (US) Company	\$654,534.96	\$239,545.46	N/A	\$894,080.42 (total of asserted section 503(b)(9) and GUC claims)
Custom Fuel Services, Inc.	\$43,113.36	N/A	N/A	\$43,113.36
Phillips 66 Company	Total claim of \$14,112,818.94, of which a “portion” was entitled		\$2,715,341.05	\$10,669,999.89

	to section 503(b)(9) status			
Martin Energy Services, LLC	\$1,529,722.44 (converted to GUC pursuant to settlement)	\$1,529,722.44 (supplier agreed to reclassification of its section 503(b)(9) claim as a GUC, but Debtors reserved their right to object to the claim)	N/A	N/A
PACRIM Petroleum, Inc.	\$1,202,962.34	N/A	N/A	\$660,881.04 (+ \$542,081.30 in cash reclamation proceeds paid to supplier)

- The second order [Docket No. 1165] approve the Debtors’ motion [Docket No. 1133] for approval of a settlement between (i) the Debtors and (ii) NuStar Energy Services, Inc. and its affiliates (collectively, NuStar). The NuStar entities had asserted claims totaling \$25,135,955.18 for the delivery of bunker fuel prior to the commencement of the chapter 11 cases, of which NuStar claimed at least \$15,705,691.02 was entitled to section 503(b)(9) administrative expense priority. Under the NuStar settlement agreement, the Debtors granted one NuStar entity (NuStar Supply and Trading LLC) an allowed \$3,629,227.80 section 503(b)(9) claim, but most of NuStar’s remaining claims were allowed as *general unsecured claims* and *for voting purposes* only, with resolution of these claims to be deferred until after confirmation of the Plan. Under the settlement agreement, NuStar also agrees to support confirmation of the Plan. The specific treatment of the claims asserted by the various NuStar entities is summarized below:

NuStar Entity	Asserted 503(b)(9) Claim	Asserted General Unsecured Claim	Treatment of 503(b)(9) Administrative Expense Claim	Treatment of General Unsecured Claim
NuStar Supply and Trading LLC	\$6,772,447.58	N/A	\$3,629,227.80 allowed	N/A
NuStar Energy Services, Inc.	\$6,476,246.17	\$9,430,264.16	Resolution deferred until after plan confirmation	\$15,906,490.33 allowed <i>for voting purposes only</i> ; resolution deferred until

				after plan confirmation
NuStar Terminals Marine Services N.V.	\$2,456,997.27	N/A	Resolution deferred until after plan confirmation	\$2,456,997.27 allowed <i>for voting purposes only</i> ; resolution deferred until after plan confirmation

II. Plan Modification Motion, Plan Supplement, and Amended Plan

- On November 18, 2015, the Bankruptcy Court also entered an order [Docket No. 1163] approving the Debtors’ motion [Docket No. 1134] seeking authorization to make certain non-advertise/non-material modifications to the Plan in order to give effect to the settlements described above.
- On November 18, the Debtors also filed a Plan Supplement, which includes, among other things, the liquidation trust agreements for the trusts to be established under the Plan, a schedule of allowed 503(b)(9) administrative expense claims, and an updated liquidation analysis detailing claim recoveries. The following day, the Debtors filed an amended Plan. [Docket No. 1171].
- Relatedly, the Debtors commenced solicitation of votes to accept or reject the Plan on November 3, 2015 [Docket No. 1136 at § D] following approval of an amended disclosure statement on October 29, 2015 [Docket No. 1112]. The deadline to submit votes on the Plan is December 3, 2015, and the hearing to consider confirmation of the Plan is scheduled for December 10, 2015.

III. Receivables Receipts Transfer Motion

- On November 18, 2015, the Bankruptcy Court entered an order [Docket No. 1162] granting a motion [Docket No. 1056] by the Debtors asking the Bankruptcy Court to (i) direct ING Bank to transfer to the Debtors any and all funds collected on account of certain outstanding supply receivables that are not the subject of any pending interpleader or vessel arrest actions, and (ii) authorize the Debtors to deposit the receipts of such supply receivables into their respective debtor-in-possession bank accounts, to be held by the Debtors subject to the liens, rights, claims, and encumbrances of ING Bank under the prepetition secured credit agreement (and the Debtors’ arguments as to the invalidity or voidability of ING Bank’s interests in the receivables) and not to be used (a) prior to the effective date of the Plan or (b) without ING Bank’s consent, or absent such consent, further order of the Bankruptcy Court. ING Bank requested certain revisions to the proposed form of order, but did not oppose approval of the motion.

- Previously, the Debtors filed a motion [Docket No. 17] in connection with commencement of their cases that requested the Bankruptcy Court to direct payment of customer receipts to the Debtors' accounts rather than to accounts under ING Bank's control. ING Bank objected to that motion, which the Bankruptcy Court denied, while encouraging the parties to reach a consensual resolution of the matter. The funds transfer motion is that resolution and approval thereof is a condition precedent to funding of the Plan.

IV. Confirmation Alternative Settlement Motion

- When the Debtors filed the Plan, they also filed a motion [Docket No. 1020] seeking approval of a "confirmation alternative settlement" (the "Confirmation Alternative Settlement") with (i) the Official Committee of Unsecured Creditors (the "Committee") and (ii) ING Bank N.V. ("ING Bank"), the Security Agent under the Debtors' prepetition secured credit agreement. The Debtors did not intend to affirmatively seek approval of the Confirmation Alternative Settlement unless the Debtors, the Committee, and ING Bank jointly agreed that confirmation of the Plan as to OWB USA was unlikely. In that event, the Debtors planned to withdraw the Plan as to OWB USA only and to seek approval of the Confirmation Alternative Settlement on a standalone and expedited basis. In a status report filed on November 16, 2015 [Docket No. 1158], the Debtors indicated their belief that the settlements described above will facilitate confirmation of the Plan, which would render the Confirmation Alternative Settlement moot. The hearing to consider approval of the Confirmation Alternative Settlement has been adjourned to December 10, 2015 at 10:00 a.m. (ET).

V. ING – Holdings Settlement Motion

- In connection with the filing of the Plan, the Debtors also filed a motion [Docket No. 1019] seeking approval of a settlement (the "Holdings Settlement") between OWB Holding and ING Bank under which the parties would essentially grant each other mutual releases, including a release of the OWB Holdings' claims asserted against ING Bank in the pending avoidance adversary proceeding. The motion is not opposed by the creditors' committee, ING Bank, or NuStar, but the hearing to consider approval of the Holdings Settlement has been adjourned to December 2, 2015 at 2:00 p.m. (ET).