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

In re:	§	Chapter 11
	§	
TMT USA SHIPMANAGEMENT LLC, *et al.*,[1]	§	Case No.: 13-33740
	§	
	§	
Debtors.	§	(Jointly Administered)

OBJECTION OF MEGA INTERNATIONAL COMMERCIAL BANK CO., LTD., TO DEBTORS' EMERGENCY MOTION FOR AN ORDER (I) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL OF EXISTING SECURED LENDERS, (II) GRANTING ADEQUATE PROTECTION FOR USE THEREOF, AND (III) SCHEDULING FINAL HEARING

TO THE HONORABLE MARVIN ISGUR, UNITED STATES BANKRUPTCY JUDGE:

Mega International Commercial Bank Co., Ltd., both in its capacity as an individual lender as well as its role as agent bank in those certain syndicated facilities related to certain of the above-captioned debtors and debtors in possession (collectively, "**Mega Bank**"), through its undersigned counsel, hereby files this objection (the "**Objection**") to the *Debtors' Emergency Motion for an Order (I) Authorizing the Debtors to Use Cash Collateral of Existing Secured Lenders, (II) Granting Adequate Protection for Use Thereof, and (III) Scheduling Final Hearing*

[1] The Debtors in these Chapter 11 cases are: (1) A Whale Corporation; (2) B Whale Corporation; (3) C Whale Corporation; (4) D Whale Corporation; (5) E Whale Corporation; (6) G Whale Corporation; (7) H Whale Corporation; (8) A Duckling Corporation; (9) F Elephant Corporation; (10) F Elephant Inc.; (11) A Ladybug Corporation; (12) C Ladybug Corporation; (13) D Ladybug Corporation; (14) A Handy Corporation; (15) B Handy Corporation; (16) C Handy Corporation; (17) B Max Corporation; (18) New Flagship Investment Co., Ltd; (19) RoRo Line Corporation; (20) Ugly Duckling Holding Corporation; (21) Great Elephant Corporation; (22) TMT Procurement Corporation; and (23) TMT USA Shipmanagement LLC.

[Dkt. No. 13] (the "**Cash Collateral Motion**").[2] In support of this Objection, Mega Bank respectfully states as follows:

PRELIMINARY STATEMENT

1. These cases do not belong in United States, and these cases are not appropriate for Chapter 11 reorganization. Mega Bank believes that the Debtors have commenced these Chapter 11 cases with no good faith purpose and have manufactured jurisdiction and filed these cases in bad faith. Because the Court will hear these issues at a later date, Mega Bank fully reserves its rights with respect thereto, but because such issues exist and there is already ample evidence in the record supporting these contentions, Mega Bank contends the Court must be particularly attentive to adequate protection issues under these facts to ensure that the status quo changes as little as possible until those bad faith issues are fully addressed and that no parties are prejudiced by actions in the interim. Mega Bank opposes any actions that, if taken, could not be remedied or unwound if the Court concludes, which Mega Bank contends it must, that the filing was initiated in bad faith. Therefore, Mega Bank files its objection for the sole purpose of opposing the Debtors' motion for authorization to use cash collateral for the interim period as reflected in the Debtors' proposed interim budget.

PROCEDURAL STATUS

2. On June 20, 2013 (the "**Petition Date**"), the Debtors filed voluntary petitions for reorganization under Chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"), thereby commencing the above-captioned Chapter 11 cases (the "**Cases**").

[2] Capitalized terms used herein but not otherwise defined shall have the meanings ascribed thereto in the Cash Collateral Motion.

3. The Debtors are debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. The U.S. Trustee has not yet appointed any official committees in these Cases. No request for the appointment of a trustee or examiner has been made to date.

4. On June 24, 2013, the Court conducted an emergency hearing on the Cash Collateral Motion and granted limited relief with respect thereto as to two, specific vessels.[3]

BACKGROUND

I. Prepetition Loan Facilities

5. The Debtors concede that the following Debtors are each borrowers (collectively, the "**Borrowers**") under credit facilities in which Mega Bank is either a lender, an arranger, an agent and/or a security trustee:

- A Duckling Corporation, pursuant to that certain Loan Agreement (as supplemented, amended, restated, or varied) dated as of April 6, 2010, by and between A Duckling Corporation, as Borrower, and Mega Bank, as Lender; and pursuant to related loan documents;

- TMT Procurement Corporation, pursuant to that certain Facility Agreement (as supplemented, amended, restated, or varied) dated as of July 4, 2012, made between TMT Procurement Corporation, as Borrower, A Ladybug Corporation, Taiwan Maritime Transportation Co., Ltd., and Mr. Hsin Chi Su, as Guarantors; and Mega Bank, as Lender; and pursuant to related loan documents;

- C Whale Corporation, pursuant to that certain Facility Agreement (as supplemented, amended, restated, or varied) dated June 21, 2010, made between C Whale Corporation, as Borrower; Great Elephant Corporation, as English Guarantor; Mega Bank and Chinatrust Commercial Bank Co., Ltd. ("**Chinatrust**"), as Arrangers; Mega Bank, as Agent and Security Trustee; and the lenders from time to time party thereto; and pursuant to related loan documents;

- D Whale Corporation, pursuant to that certain Facility Agreement (as supplemented, amended, restated, or varied) dated September 28, 2010, made

[3] *See* Order Authorizing Use of Cash Collateral and Granting Adequate Protection, *In re A Whale Corp.*, Case No. 13-33741 (Bankr. S.D. Tex. June 24, 2013), ECF No. 3; Order Authorizing Use of Cash Collateral and Granting Adequate Protection, *In re C Ladybug Corp.*, Case No. 13-33752 (Bankr. S.D. Tex. June 24, 2013), ECF No. 3.

between D Whale Corporation, as Borrower, Ugly Duckling Holding Corp., as English Guarantor; Mega Bank and Chinatrust, as Arrangers; Mega Bank, as Agent and Security Trustee; and the lenders from time to time party thereto; and pursuant to related loan documents;

- E Whale Corporation, pursuant to that certain Facility Agreement (as supplemented, amended, restated, or varied) dated October 25, 2010, made between E Whale Corporation, as Borrower; Ugly Duckling Holding Corp., as English Guarantor; Mega Bank and Chinatrust, as Arrangers; Mega Bank, as Agent and Security Trustee; and the lenders from time to time party thereto; and pursuant to related loan documents;

- G Whale Corporation, pursuant to that certain Facility Agreement (as supplemented, amended, restated, or varied) dated March 9, 2011, made between G Whale Corporation, as Borrower; Ugly Duckling Holding Corp., as English Guarantor; Mega Bank, Chinatrust, and First Commercial Bank, as Arrangers; Mega Bank, as Agent; Chinatrust, as Security Trustee; and the lenders from time to time party thereto; and pursuant to related loan documents; and

- H Whale Corporation, pursuant to that certain Facility Agreement (as supplemented, amended, restated, or varied) dated June 7, 2011, made between H Whale Corporation, as Borrower; Ugly Duckling Holding Corp., as English Guarantor; Mega Bank, Chinatrust, and First Commercial Bank, as Arrangers; Mega Bank, as Agent; First Commercial Bank, as Security Trustee; and the lenders from time to time party thereto; and pursuant to related loan documents.

Cash Collateral Motion ¶ 10. The facilities are secured by, among other things, a fully perfected, first priority mortgage on the vessel of each respective Debtor identified above. The TMT Procurement Corporation facility relates to the *M/V A Ladybug*, the owner of which, A Ladybug Corporation, has provided (i) an assignment of earnings, (ii) an assignment of charter, (iii) an assignment of insurance, (iv) an assignment of requisition compensation, and (v) a charge over earnings account. Each of the other facilities is further secured by, among other things, (i) assignments of earnings, (ii) assignments of charter, (iii) assignments of insurance, (iv) assignments of requisition compensation, and (iv) pledges over retention account by the respective Debtor. *Id.* ¶ 10.

II. Defaults Under the Prepetition Loan Facilities

6. The Borrowers have defaulted under each of their respective loan facilities, and all amounts owing thereunder have been accelerated. As of the Petition Date, the Borrowers were indebted to Mega Bank in the approximate principal amount of not less than $415.5 million plus accrued interest, fees and costs.

A. A Duckling Corporation

7. On April 16, 2013, Mega Bank issued a Notice of Default and Acceleration in respect of the A Duckling facility, wherein Mega Bank notified the addressees of certain continuing events of default, including certain payment defaults. The *M/V A Duckling* was arrested in a port in the People's Republic of China (the "**PRC**"), where it has remained under arrest today. Mega Bank accordingly declared the respective loan, together with accrued interest and all other amounts accrued and outstanding under the loan documents immediately due and payable. As of the Petition Date, A Duckling Corporation, among others, was indebted to Mega Bank in the approximate principal amount of not less than $12.5 million plus accrued interest, fees and costs.

B. TMT Procurement Corporation (A Ladybug)

8. On April 23, 2013, Mega Bank issued a Notice of Default and Acceleration in respect of the TMT Procurement facility, wherein Mega Bank notified the addressees of certain continuing events of default, including certain payment defaults. Mega Bank accordingly declared the respective loan, together with accrued interest and all other amounts accrued and outstanding under the loan documents immediately due and payable. As of the Petition Date, TMT Procurement Corporation, among others, was indebted to Mega Bank in the approximate principal amount of not less than $40.43 million plus accrued interest, fees and costs.

C. C Whale Corporation

9. On March 12, 2013, Mega Bank issued a Notice of Default on account of the arrest of the *M/V C Whale* in the port of Singapore as of March 1, 2013. The Notice of Default advised the addressees that, pursuant to the relevant mortgage, C Whale Corporation agreed to procure the release of the vessel immediately upon receiving notice.

10. As a result of the continuing failure to procure the release of the *M/V C Whale*, on March 26, 2013, Mega Bank issued a Notice of Default and Acceleration, wherein Mega Bank notified the addressees of certain continuing events of default, including certain payment defaults and the failure to procure the release of the *M/V C Whale* from arrest in the port of Singapore. Mega Bank accordingly declared the respective loan, together with accrued interest and all other amounts accrued and outstanding under the loan documents immediately due and payable. As of the Petition Date, C Whale Corporation, among others, was indebted to Mega Bank in the approximate principal amount of not less than $63 million plus accrued interest, fees and costs.

D. D Whale Corporation

11. On April 3, 2013, Mega Bank issued a Notice of Default and Acceleration in respect of the D Whale facility, wherein Mega Bank notified the addressees of certain continuing events of default, including certain payment defaults. Mega Bank accordingly declared the respective loan, together with accrued interest and all other amounts accrued and outstanding under the loan documents immediately due and payable. As of the Petition Date, D Whale Corporation, among others, was indebted to Mega Bank in the approximate principal amount of not less than $73.28 million plus accrued interest, fees and costs. Mega Bank does not currently know the location of the *M/V D Whale*.

E. E Whale Corporation

12. On January 28, 2013, Mega Bank issued a Notice of Default in respect of the E Whale facility on account of certain continuing monetary defaults. The *M/V E Whale* was arrested in Cape Town, South Africa, because, on information and belief, E Whale Corporation owed money to one of its chartering parties who initiated proceedings to arrest the vessel. On February 19, 2013, Mega Bank issued a second Notice of Default in respect of the E Whale facility on account of E Whale Corporation's failure to release the *M/V E Whale* from arrest in the port of Cape Town, South Africa, in accordance with the relevant mortgage.

13. On April 3, 2013, Mega Bank issued a Notice of Default and Acceleration, wherein Mega Bank notified the addressees of certain continuing events of default, including certain payment defaults and the continuing failure to procure the release of the *M/V E Whale* from arrest in the port of Cape Town. Mega Bank accordingly declared the respective loan, together with accrued interest and all other amounts accrued and outstanding under the loan documents immediately due and payable. As of the Petition Date, E Whale Corporation, among others, was indebted to Mega Bank in the approximate principal amount of not less than $73.28 million plus accrued interest, fees and costs.

F. G Whale Corporation

14. On April 1, 2013, Mega Bank issued a Notice of Default and Acceleration in respect of the G Whale facility, wherein Mega Bank notified the addressees of certain continuing events of default, including certain payment defaults. Mega Bank accordingly declared the respective loan, together with accrued interest and all other amounts accrued and outstanding under the loan documents immediately due and payable. As of the Petition Date, G Whale Corporation, among others, was indebted to Mega Bank in the approximate principal amount of not less than $76.5 million plus accrued interest, fees and costs.

G. H Whale Corporation

15. On April 16, 2013, Mega Bank issued a Notice of Default and Acceleration in respect of the H Whale facility, wherein Mega Bank notified the addressees of certain continuing events of default, including certain payment defaults. Mega Bank accordingly declared the respective loan, together with accrued interest and all other amounts accrued and outstanding under the loan documents immediately due and payable. As of the Petition Date, H Whale Corporation, among others, was indebted to Mega Bank in the approximate principal amount of not less than $76.5 million plus accrued interest, fees and costs.

III. Prepetition Enforcement Proceedings

A. M/V C Whale

16. On March 1, 2013, KPI Bridge Oil Limited (incorporated in the Cayman Islands), a bunker supplier to the vessel, caused the *M/V C Whale* to be placed under arrest in the port of Singapore under the supervision of the High Court of the Republic of Singapore (the "**Singaporean Court**"). Prior to the Petition Date, while the vessel remained under arrest, Mega Bank also applied to the Singaporean Court for the arrest of the *M/V C Whale*. Since that period, the Admiralty Marshall for the Singaporean Court has taken control of the vessel *in Custodia Legis*, and has incurred expenses towards the arrest of that vessel. The Admiralty Marshall has indicated he intends to proceed with the sale of the vessel to recover the expenses incurred.

17. A court order for the sale of the vessel was issued on May 10, 2013. Interested buyers may submit sealed bids to the Singapore Court to bid for the vessel. Bidding currently is scheduled to close on July 8, 2013.

B. M/V E Whale

18. Three sets of arrest proceedings have been commenced against the *M/V E Whale* in the High Court of South Africa (Western Cape High Court) (the "**South African Court**").[4] The vessel remains under arrest in the port of Cape Town. The crew of the vessel commenced the first arrest proceeding on April 3, 2013, for unpaid crew wages. Mega Bank commenced the second arrest proceeding on April 18, 2013. Dolphin Offshore (Pty) Ltd., a South African corporation, commenced the third arrest proceeding on April 27, 2013, for unpaid costs for stores, provisions, and supplies to the vessel. Mega Bank also commenced a sale application proceeding on May 20, 2013, in the South African Court. Under applicable South African law, any termination of the arrest proceedings on the bases set forth already would result in the termination of any ability to proceed with future arrest proceedings on the same grounds.

C. M/V A Duckling

19. Zhejiang Eastern Shipyard Co., Ltd. ("**ZESCO**"), and Xiamen Hailong Manning Service Co. Ltd. ("**Hailong**"), each incorporated in the PRC, have commenced arrest proceedings against the *M/V A Duckling* on May 9, 2013, and May 16, 2013, respectively. ZESCO commenced its proceeding for unpaid vessel repair fees; Hailong commenced its proceeding for unpaid crew wages and crew agency fees. The *M/V A Duckling* remains under arrest in the port of Yantai, PRC, under the supervision of the Qingdao Maritime Court, PRC.

OBJECTION

I. The Debtors Have No Business Purpose for the Use of Cash Collateral

20. The Debtors have no business purpose for the use of cash collateral, on an emergency basis or otherwise, and, accordingly, have not demonstrated an exercise in sound

[4] On information and belief, Mega Bank understands that a fourth arrest in respect of the E Whale vessel may have occurred within the past week.

business judgment by moving for such use. To begin, Mega Bank has not received a detailed budget from the Debtors in respect of their proposed use of cash collateral during the interim period,[5] without which Mega Bank, much less the Debtors, cannot determine the emergency at issue.[6]

21. The Debtors generally propose to use Mega Bank's and other prepetition secured lenders' cash collateral to pay unspecified maritime lien claimants and unspecified critical vendors so as to free the vessels and operate their businesses (to the extent any of the Debtors have businesses to operate). To date, however, the Debtors have no authority to pay substantial accrued insurance premiums to their insurance broker; the Debtors have not even sought the authority to pay such sums (as discussed below). Without definitive evidence of sufficient insurance coverage now and during the pendency of these Chapter 11 cases, the Debtors should not be allowed to use one creditor's cash collateral to pay other creditors (against the fundamental bankruptcy principle of equality of distribution) only to free their vessels into the open sea without P&I liability insurance to the detriment of the Debtors, their estates, their creditors, and the public at large. Even if the Debtors had sufficient insurance coverage to operate lawfully, which they apparently do not given the notices issued, the Debtors likely have insufficient charter hire to operate economically in order to sustain their business, let alone achieve an effective reorganization.

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[5] At 9:12 p.m. (Central) on Wednesday, June 26, the Debtors provided Mega Bank with a "four week cash analysis." The "analysis," however, provides no information in respect of the specific cash needs of the Borrowers or the other debtors in possession. The document, among other things, provides no guidance on which vendors or maritime lien claimants would be paid or for what purpose.

[6] In this regard, the Debtors have failed to comply with Rule 8 of this Court's Procedures for Complex Chapter 11 Bankruptcy Cases. Mega Bank reserves the right to object on any basis to the *Debtors' Emergency Motion for an Order (I) Authorizing the Debtors to (A) Pay Secured Maritime Lien Claimants That Have Arrested Vessels and (B) Pay or Honor Prepetition Obligations to Foreign Vendors, Service Providers and Governments and Certain Critical Vendors, and (II) Authorizing Financial Institutions to Honor All Related Checks and Electronic Payment Requests* [Dkt. No. 7] (the "**Critical Vendor Motion**").

II. The Debtors Cannot Provide Adequate Protection to Use Cash Collateral

22. Even if the Debtors could demonstrate sufficient justification for the emergency use of cash collateral, which they cannot, the Debtors cannot provide adequate protection to use cash collateral. Section 363(c)(2) of the Bankruptcy Code states that a debtor in possession "may not use, sell, or lease cash collateral . . . unless (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and hearing, authorizes such use, sale, or lease" in accordance with the provisions of Section 363 of the Bankruptcy Code. 11 U.S.C. § 363(c)(2). To begin, Mega Bank does not consent to the use of its cash collateral. The Debtors, therefore, may use cash collateral only if the court, after notice and a hearing, authorizes such use in accordance with the Bankruptcy Code. Section 363(e) of the Bankruptcy Code requires that adequate protection be provided to secured creditors whenever their collateral is used, sold or leased by the debtor. *Id.* § 363(e). Adequate protection is a flexible concept that can take the form of periodic cash payments, additional or replacement liens, or such other relief as will provide the indubitable equivalent of the secured creditor's interest in the collateral. *Id.* § 361(1)–(3). The Debtors rightly concede that they bear the burden of proof on the issue of adequate protection. Cash Collateral Motion ¶ 17; *see also* 11 U.S.C. § 363(p)(1). Based on the factual background supplied above, grounds do not exist for the Court to permit the Debtor's use of the Cash Collateral.

A. The Debtors Cannot Offer Adequate Protection Without Sufficient Insurance Coverage

23. Many courts have found adequate protection to be lacking when a debtor has failed to maintain insurance coverage as required under applicable law, and such courts have

even lifted the stay on such bases.[7] *See, e.g., In re Tel-A-Commc'ns Consultants, Inc.*, 50 B.R. 250, 253 (Bankr. D. Conn. 1985) (adequate protection can require the obligation to obtain and keep in force all required insurance coverage); *In re Heinzeroth*, 40 B.R. 518, 520 (Bankr. E.D. Pa. 1984) ("A debtor who fails to provide insurance coverage is not entitled to the protection of the automatic stay under § 362(d)(1)."); *cf. In re Loof*, 41 B.R. 855, 856 (Bankr. E.D. Penn. 1984) (turnover denied without proof of vehicle insurance). Because the Debtors' bear the burden of proving adequate protection, the Debtors bear the burden of proving that they maintain insurance in accordance with applicable law, in light of the Notices of Cancellation of P&I insurance discussed herein and any other cancellations of which Mega Bank is unaware. As previously stated, even if the Debtors have sufficient insurance coverage to operate lawfully, which they may not, the Debtors likely have insufficient charter hire to operate economically in order to sustain their business, let alone achieve an effective reorganization. For these reasons, the Cash Collateral Motion should be denied.

24. The Debtors admit that "[t]he operation of any Vessel includes risks such as mechanical failures, collision, property loss, cargo loss or damage, and business interruption due to political circumstances in foreign countries, hostilities and labor strikes." Declaration ¶ 39. "Additionally, there is an inherent possibility of marine disaster, including spills and other environmental mishaps, and the liabilities arising from owning and operating vessels in international trade." *Id.* "To safeguard against these risks," the Declaration continues, "the Debtors' Insurance Programs include coverage for (i) protection and indemnity ('P&I'); (ii) freight, demurrage and defense ('FD&D'); and (iii) marine hull, machinery, gear and equipment ('Hull & Machinery'). *Id.*

[7] Mega Bank expressly reserves the right to move for relief from the automatic stay under any basis discussed herein or otherwise.

25. A shipowner, such as the Debtors, procures Hull & Machinery insurance to insure the value of the vessel from damage or total loss. If, for example, the vessel were to sink to the bottom of the ocean on account of the perils of the sea, the insured could recover the value of the ship on account of its Hull and Machinery insurance. A shipowner procures P&I insurance to cover against "loss, damage, liability or expense, including liabilities in respect of wreck removal, injury or death of crew, passengers and other third parties, and the loss or damage to cargo, incurred by the insured with respect to the insured's interest in a vessel and in connection with the operation of the owned vessel during the effective terms of the policies." *Id.* ¶ 40. Taking the example further, if the sunken ship were an oil carrier, such as one of the Whales, and thus caused an environmental disaster, the loss of life, and pollution damage to the environment, the insured shipowner may be protected from third-party claims on account of its P&I insurance.

26. The necessity of insurance coverage is readily acknowledged by the Debtors, who suggest in their Declaration that an emergency motion for court authorization to pay approximately $1.45 million in unpaid premiums for their policies as of the Petition Date would be necessary to maintain their Insurance Programs, which "are essential to the preservation of the Debtors' business, property and assets and, in certain instances, . . . required by various regulators, laws, loan agreements and contracts that govern the Debtors' maritime and commercial activity." *Id.* ¶¶ 38–44. Conspicuously missing from the docket, however, is any such motion. Without authority of the court to pay past-due insurance premiums in the approximate amount of $1.45 million, Mega Bank has reason to believe, as the Debtors suggest, that the Debtors' insurance coverage and thus the Debtors' business, property, and assets are in serious jeopardy.

27. In fact, Mega Bank's concerns are substantiated because Mega Bank understands that the Debtors' P&I Insurance is provided through a "club" or what is otherwise known as a mutual which shares the costs for such insurance among other vessel operators. The Debtors are participants in a P&I Insurance Carrier known as The Britannia Steam Ship Insurance Association Limited ("**Britannia**"), whose rules expressly state that if one of its members files or initiates insolvency proceedings, its coverage will be cancelled and terminated. This has, in fact, occurred. Britannia has cancelled insurance in respect of the C, D, E, and G Whales and A Duckling. Termination notices were apparently sent on June 25th. *See* Exhibit A attached hereto. As this Court might expect, to protect its interests, the Debtors attempted to tender a payment for the premium and, even though the premium (*i.e.*, the "advance call") was tendered to Britannia, Britannia returned the money indicating that the insurance and, presumably the basis for underwriting the risk, are no longer valid. It can be inferred, therefore, that Britannia (and any other member of the International Group of P&I Clubs) would regard the Debtors as unacceptable and uninsurable risks. Without sufficient P&I coverage, the Debtors, like any other shipowner in the industry, could not possibly operate their vessels in furtherance of any business purpose (much less reorganizational purpose) because the Debtors would be in violation of "laws, loan agreements and contracts that govern the Debtors' maritime and commercial activity." *Id.* ¶ 42. The Whale vessels will not be accepted into ports without P&I cover, and no further trading would be allowed in view of the risk to the environment and third parties. Absent evidence that P&I coverage exists (among the other policies), which as of today's date, Mega Bank believes does not exist given the notices it has received, Debtors' vessels should not be permitted to continue to during the pendency of these cases on the open ocean.

28. Even further, the Debtors did not acknowledge one way or the other to the Court at the hearing on June 24, 2013, of their intention to file an insurance motion, but the Debtors nevertheless sought and obtained emergency relief for the use of other prepetition lenders' use of cash collateral. For what legitimate business purpose, Mega Bank does not know, but as indicated in that hearing by Mega Bank, it has and continues to have substantial concern that adequate protection cannot be provided by these Debtors.

B. The Debtors Cannot Offer Adequate Protection Without Sufficient Cash Infusion to Each Debtor

29. As to at least the Mega Bank collateral vessels under arrest—the *M/V A Duckling*, the *M/V C Whale* and the *M/V E Whale*—millions of dollars have been incurred in paying costs associated with the remedy of arrest. If the vessels are somehow released and this case is dismissed for bad faith or other reasons, the vessels would need to be re-arrested, and Mega Bank, as well as others, would have incurred millions of dollars which will need to be re-incurred in re-establishing the arrest procedures and restoring the parties to the precise position they were in at the filing of the case. Debtors have not proposed any adequate protection able to address the harm suffered by these creditors as a result of any steps attempting to release the vessels.

30. Similarly, there are procedural prejudices for which Debtors have not offered any adequate protection. Once an arrest proceeding is initiated, such as the one in the Port of Cape Town, South Africa, for the *M/V E Whale*, if the vessel is released, the arresting party is barred from re-arresting the vessel in the same jurisdiction on those same grounds—which here is the acceleration and non-payment of the underlying loan obligations.

C. No Equity Cushion

31. "[I]n determining whether a secured creditor's interest is adequately protected, most courts engage in an analysis of the property's 'equity cushion'—the value of the property after deducting the claim of the creditor seeking relief from the automatic stay and all senior claims." *In re Mendoza*, 111 F.3d 1264, 1272 (5th Cir. 1997) (quoting *In re Indian Palms Assoc., Ltd.*, 61 F.3d 197, 207 (3rd Cir.1995)). While an equity cushion can in some circumstances provide adequate protection, in order to demonstrate that a secured creditor is adequately protected by its collateral, a debtor must show that there is a *substantial* equity cushion. *See In re Torres Dev. LLC*, 413 B.R. 687, 697 (Bankr. S.D. Tex. 2009) (collecting cases and using 20% as a benchmark in a case involving real estate). The calculation of an equity cushion is inherently speculative, and any such cushion must contain a margin of error. *See In re Le May*, 18 B.R. 659, 661 (Bankr. D. Mass 1982) (holding that an equity cushion of seven percent (7%) did not provide secured creditor with adequate protection). When there is no equity cushion, or a small equity cushion that is eroding, no adequate protection exists. *See In re Strug-Division, LLC*, 380 B.R. 505, 514–15 (Bankr. N.D. Ill. 2008).

32. The Debtors suggest that adequate protection may be provided in the form of an equity cushion. "The Debtors believe that *almost all* of the Prepetition Bank Lenders are adequately protected for the use of the Cash Collateral in that the orderly liquidation value of the Prepetition Bank Lenders' collateral exceeds the amounts outstanding under the relevant facility." Cash Collateral Motion ¶ 22 (emphasis added). The Debtors fail to identify which Prepetition Bank Lenders are not, in their opinion, protected by an equity cushion. In any event, Mega Bank avers that no equity cushion adequately protects its interests. Tellingly, the Debtors offer absolutely no support for their contention. No appraisal or any other supporting documentation as to value is attached to the Cash Collateral Motion or the Declaration. At the

hearing on June 24, 2013, counsel to the Debtors provided undersigned counsel with alleged opinions of value from SSY Valuation Services Limited ("**SSY**") and the China Corporation Register of Shipping, established under the authority of the Ministry of Transportation and Communications, PRC (the "**PRC Register of Shipping**"), the authentication of which undersigned counsel has not verified. SSY provided opinions of value in respect of the Whale vessels and *M/V A Ladybug* on June 30, 2012; the PRC Register of Shipping provided an opinion of value in respect of the *M/V A Duckling* on November 28, 2012. SSY's valuations are highly qualified and outdated. As recently as June 2013, Mega Bank procured more recent appraisals of certain of the vessels, each indicating values substantially lower than those indicated by the Debtors. The Debtors' unsupported allegations that Mega Bank is adequately protected with an equity cushion are meritless, and the Cash Collateral Motion should be denied.

D. Proposed Replacement Liens are Insufficient to Adequately Protect Mega Bank

33. The Debtors offer the following collateral for replacement liens as adequate protection: "all of the relevant Debtors' right, title and interest in, to, and under all of the Debtors' now owned and after-acquired cash, and Cash Collateral of the Debtors (whether maintained with the Prepetition Bank Lenders or other financial institutions), any investment of such cash and cash collateral, inventory, accounts receivable, any cause of action (excluding avoidance or other actions arising under chapter 5 of the Bankruptcy Code), and the proceeds thereof (whether recovered by judgment, settlement or otherwise), any right to payment whether arising before or after the Petition Date, and the proceeds, products, rents and profits of all of the foregoing." Proposed Cash Collateral Order ¶ 6 [Dkt. No. 13-1].

34. The proposed replacement liens are insufficient to adequately protect Mega Bank's interest in its collateral. A replacement lien on charter revenues, which in certain

circumstances do not currently exist, or which would be insufficient to operate the vessel in any event, cannot adequately protect Mega Bank's interests. Once arrest and seizure of vessels commenced, the various Debtors commenced an exercise to isolate their vessels to avoid further seizure and arrests. As a result, many of the Debtors' vessels have essentially been idle for extended periods. There are insufficient charters that exist in the hands of the assigning parties to provide any adequate protection.

35. Even if such charters exist, they are of no value. The "D, E, G, and H Whale" vessels, for example, are bareboat chartered (*i.e.*, leased) by the shipowning debtors to Blue Whale Corporation ("**Blue Whale**"), a non-debtor affiliate of the shipowning debtors. As a result of these bareboat charters, Blue Whale (and not the shipowning debtors) has possession of the vessels and is responsible for contracting for the crews, their supplies, their food, bunkering of oil and lubricants, and other consumables. Blue Whale is responsible for these contractual obligations in the ordinary course of operation, not the SPEs that own the Whale vessels. Blue Whale's charter is known as a "Head Charter." Blue Whale has sub-chartered the G and H Whales, for example, each for a mere $19,875 per day, subject to downward adjustment, to third parties. Blue Whale generally will receive the revenue and cost reimbursement for any such "charterhire" from the sub-charterers. Pursuant to certain Notices of Assignment, Blue Whale has been instructed to pay charterhire to certain "proceeds accounts" on which Mega Bank has a duly perfected security interest. Blue Whale, however, has made no such payments since December 2012/January 2013, except in respect of the E Whale, when funds were deposited in May 2013, at which time the vessel had been under arrest for almost one year. Blue Whale's failure to remit charterhire to the proceeds accounts and Blue Whale's voluntary absence before this Court not only speaks volumes as to the purpose of these Chapter 11 cases but also

demonstrates the inadequacy of the replacement liens on charterhire or accounts receivable. In any event, it is entirely improper for the Debtors to seek the use of Mega Bank's cash collateral to pay expenses contracted for and payable by Blue Whale, a non-debtor affiliate, especially since that non-debtor affiliate is substantially in arrears for payments owed to Debtors for use of the vessels.

36. It is equally misleading for the Debtors to offer security or value in a lien over bunkers on board a vessel. The bunkers will be consumed. There is no re-sale value in bunkers on board a vessel; they cannot be pumped off or sold to a third party because they are considered to be "contaminated," once loaded into a vessel, having become mixed with existing fuel in the vessel's tanks. The bunkers themselves are more akin to a fixture, albeit a consumable one, which has no incremental value over and above the value of the vessel once loaded; thus, Mega Bank asserts that liens over such supplies are of no value or moment.

E. The Use of Cash Collateral Will Not Preserve the Going Concern Value of the Debtors' Businesses or Provide Adequate Protection

37. "[T]he Debtors submit that use of the Cash Collateral will allow the Debtors to continue their operations and thereby protect the Prepetition Bank Lenders' interests." Cash Collateral Motion ¶ 23. The Debtors argue that the going concern value of their business provides adequate protection. *Id.* Although courts have recognized the preservation of "going concern value" as a basis for adequate protection, the Debtors' Chapter 11 cases simply are not the types of Chapter 11 reorganizations where courts have so held. *See, e.g.*, *In re 495 Central Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (finding that existing lien holders were adequately protected because there was "*no question* that the property would be improved" by the requested relief and because "an increase in value will result," which such value would "serve as adequate protection for" the secured claim) (emphasis added). The vessels at issue are

marine vessels, which are depreciating assets by their nature and have a limited useful life. Moreover, the more they are at sea, their value declines daily.

38. The Debtors have demonstrated an inability to pay crew wages or other critical services and supplies—which has caused such creditors to arrest the Debtors' vessels, such as the *M/V C Whale* and the *M/V E Whale*, before any of the Prepetition Bank Lenders undertook to arrest same. These vendors and others continue to incur liens which, in some jurisdictions, may prime Mega Bank, impairing its collateral and an equity cushion, if any exists. For the reasons stated herein, the Debtors' ability to continue to operate as a going concern is unimaginable, with or without use of cash collateral to pay forward looking expenses. Accordingly, "going concern value" will not adequately protect Mega Bank's interests. The vessels need to be cleaned of claims, debts and liens through the court sale process, as underway in Singapore and South Africa, and sold to new shipowners who have a sound and viable business structure.

RESERVATION OF RIGHTS

39. In addition to the arguments raised herein, Mega Bank reserves any and all rights to move, respond, or object, on any grounds, to any and all issues raised at or prior to the hearing on the Cash Collateral Motion (including, without limitation, any and all issues not specifically addressed in this Objection) or any other motions or pleadings scheduled for hearing concurrently therewith (including, without limitation, the Critical Vendor Motion and the Debtors' *Complaint* and *Amended Complaint to Compel Turnover and for Temporary and Permanent Injunctive Relief* [Dkt. Nos. 1, 6] in the related adversary proceeding).

* * *

WHEREFORE, Mega Bank respectfully requests that the Court enter an order denying the Cash Collateral Motion and granting such further relief as may be just and necessary under the circumstances.

Respectfully submitted this 26th day of June, 2013,

MAYER BROWN LLP

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Attorneys for Mega International Commercial Bank Co., Ltd.

Exhibit A

Britannia

25 June 2013

The Britannia Steam Ship
Insurance Association Limited

Managers
Tindall Riley (Britannia) Limited
Regis House
45 King William Street
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www.britanniapandi.com

Mega International Commercial Bank Co Ltd
No. 100, Chi-Lin Rd.,
Taipei, Taiwan
Republic of China

Attn: Mr Lee (cheng.hsien@megabank.com.tw)

1st Priority Mortgagee

Our Ref: MRAH/ne

Dear Sirs

A DUCKLING
A Duckling Corporation (Owner)

As a matter of courtesy we write to inform you that with effect from 20 June 2013, pursuant to Rule 33(3) – Failure of Corporation, of the Association's Rules cover for TMT Co vessels with The Britannia Steam Ship Insurance Association Limited ceased.

This letter supersedes our letter dated 13 June 2013.

Yours faithfully
for and on behalf of
The Britannia Steam Ship Insurance Association Limited

for Tindall Riley (Britannia) Limited
Managers of the Association

Britannia

25 June 2013

The Britannia Steam Ship
Insurance Association Limited

Managers
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Mega International Commercial Bank Co Ltd
No. 100, Chi-Lin Rd.,
Taipei, Taiwan
Republic of China

Attn: Mr Lee (Cheng.hsien@megabank.com.tw)

1st Priority Mortgagee

Our Ref: MRAH/ne

Dear Sirs

C WHALE
C Whale Corporation (Owner)

As a matter of courtesy we write to inform you that with effect from 20 June 2013, pursuant to Rule 33(3) – Failure of Corporation, of the Association's Rules cover for TMT Co vessels with The Britannia Steam Ship Insurance Association Limited ceased.

This letter supersedes our letter dated 13 June 2013.

Yours faithfully
for and on behalf of
The Britannia Steam Ship Insurance Association Limited

for Tindall Riley (Britannia) Limited
Managers of the Association

Britannia

25 June 2013

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Insurance Association Limited

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Mega International Commercial Bank Co Ltd
No. 100, Chi-Lin Rd.,
Taipei, Taiwan
Republic of China

Attn: Mr Lee (Cheng.hsien@megabank.com.tw)

1st Priority Mortgagee

Our Ref: MRAH/ne

Dear Sirs

D WHALE
D Whale Corporation (Owner)

As a matter of courtesy we write to inform you that with effect from 20 June 2013, pursuant to Rule 33(3) – Failure of Corporation, of the Association's Rules cover for TMT Co vessels with The Britannia Steam Ship Insurance Association Limited ceased.

This letter supersedes our letter dated 13 June 2013.

Yours faithfully
for and on behalf of
The Britannia Steam Ship Insurance Association Limited

for Tindall Riley (Britannia) Limited
Managers of the Association

Britannia

25 June 2013

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Attn: Mr Lee (Cheng.hsien@megabank.com.tw)

1st Priority Mortgagee

Our Ref: MRAH/ne

Dear Sirs

E WHALE
E Whale Corporation (Owner)

As a matter of courtesy we write to inform you that with effect from 20 June 2013, pursuant to Rule 33(3) – Failure of Corporation, of the Association's Rules cover for TMT Co vessels with The Britannia Steam Ship Insurance Association Limited ceased.

This letter supersedes our letter dated 13 June 2013.

Yours faithfully
for and on behalf of
The Britannia Steam Ship Insurance Association Limited

for Tindall Riley (Britannia) Limited
Managers of the Association

Britannia

25 June 2013

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Attn: Mr Lai (neal.lai@email.chinatrust.com.tw)

1st Priority Mortgagee

Our Ref: MRAH/ne

Dear Sirs

G WHALE
G Whale Corporation (Owner)

As a matter of courtesy we write to inform you that with effect from 20 June 2013, pursuant to Rule 33(3) – Failure of Corporation, of the Association's Rules cover for TMT Co vessels with The Britannia Steam Ship Insurance Association Limited ceased.

This letter supersedes our letter dated 13 June 2013.

Yours faithfully
for and on behalf of
The Britannia Steam Ship Insurance Association Limited

for Tindall Riley (Britannia) Limited
Managers of the Association