



VAN STEENDEREN MAINPORTLAWYERS



International Law Seminar 2016

Recent developments in Dutch maritime law: O.W. Bunker: the Dutch perspective



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Introduction

- The O.W. Bunker debacle
- The Dutch perspective
- Conclusion

The O.W. Bunker debacle

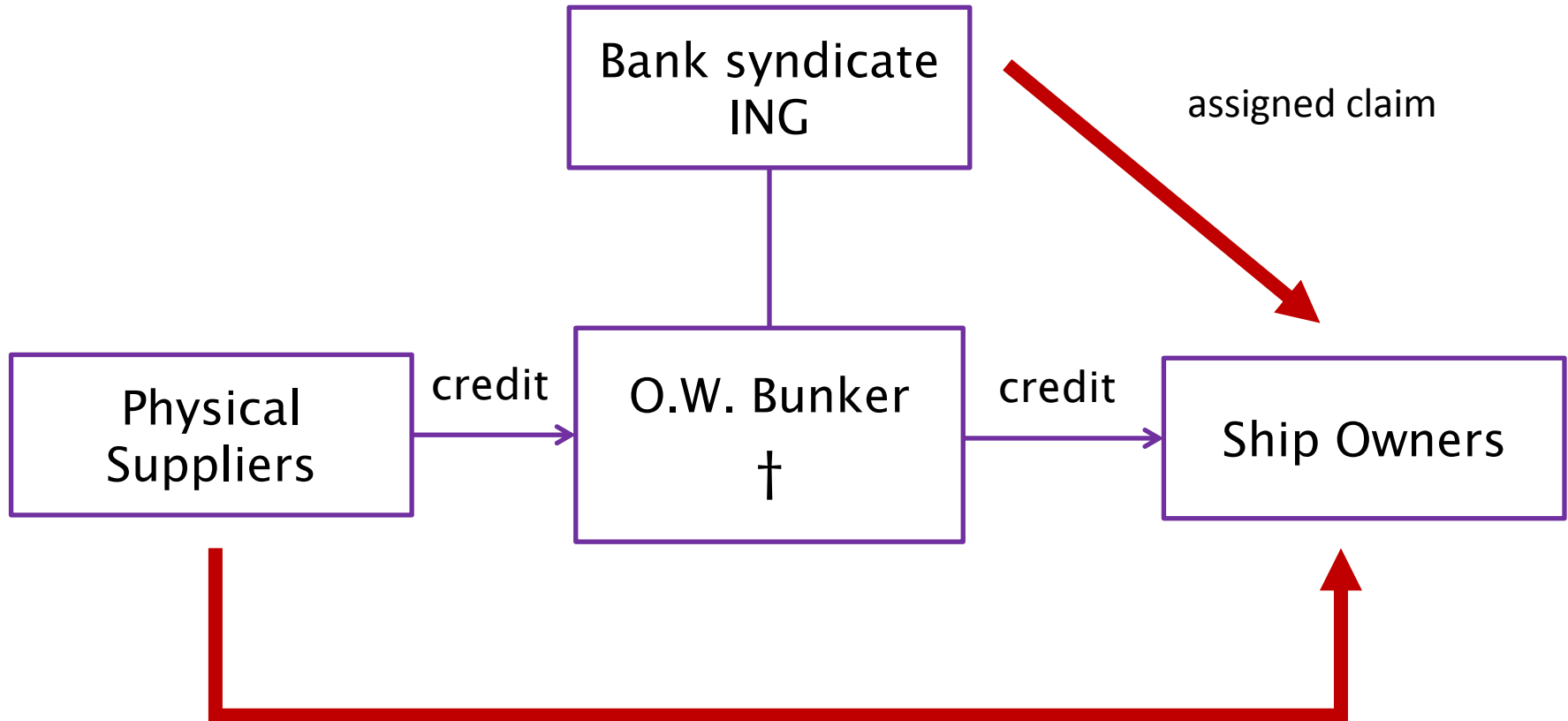
The O.W. Bunker debacle

- 7% of worldwide bunker trade
- One of the world's largest bunker traders
- IPO March 2014
- Bankruptcy: 7 November 2014

The O.W. Bunker debacle



The O.W. Bunker debacle



The Dutch perspective

The Dutch perspective

- Rotterdam large bunker port
- Arrest friendly jurisdiction
- Few disputes litigated in the Netherlands
- No interpleader proceedings

The Dutch perspective

- Court of Amsterdam 28 September 2016 “Equinox / Yang Ming et al.”

- Defendants:

- /Ship owner Yang Ming

- /Time charterer Yang Ming Transport

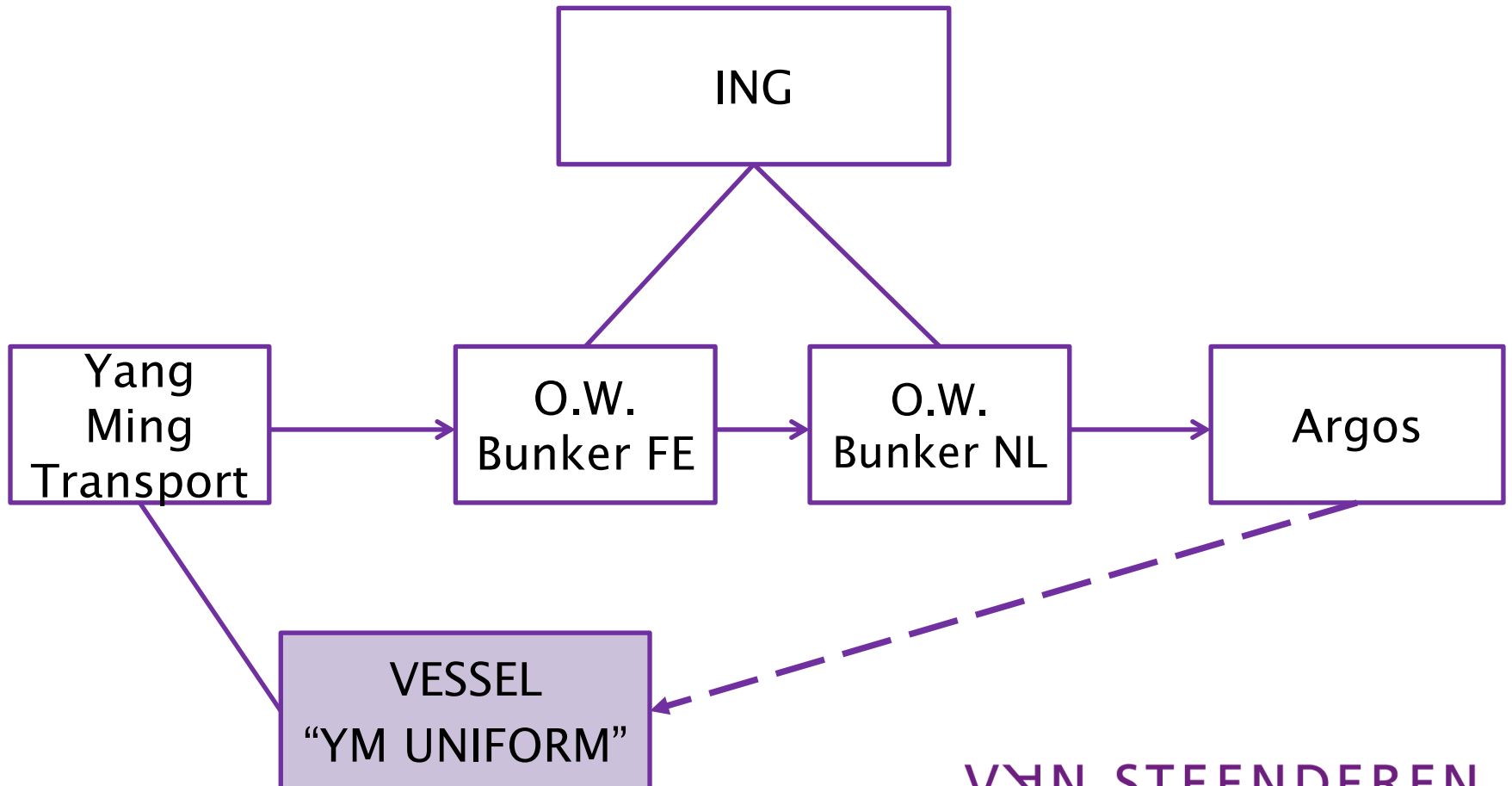
- /Trustee

- /ING

The Dutch perspective

- Plaintiff: Equinox
/Credit insurer of supplier Argos
/Subrogated
- No payment until judgment
- No recovery until judgment

The Dutch perspective



The Dutch perspective

- Contract YM Transport - O.W. Bunker FE
- O.W. Bunker's GTC applicable
 - /Retention of title
 - /Consent for use in vessel
 - /Applicability third party GTC

The Dutch perspective

- Contract O.W. Bunker NL – O.W. Bunker FE
- O.W. Bunker GTC applicable

The Dutch perspective

- Contract O.W. Bunker NL - Argos
- Argos' GTC applicable
 - /Retention of title
 - /Consent for use in vessel

The Dutch perspective

- Delivery by Argos on 5 November 2014
- BDN and Bunker Requisition
 - /Signed by vessel's chief engineer
 - /Reference to Argos' GTC

The Dutch perspective

- Notices Argos to Yang Ming
/11, 14 November 2014
/Reference bankruptcies O.W. Bunker
/Argos owner bunkers until payment
/Demand return bunkers or payment

The Dutch perspective

- Legal proceedings:
- Equinox claims payment from Yang Ming/Yang Ming Transport
- Equinox claims cooperation from Trustee/ING

The Dutch perspective

- Claim basis Equinox:

- Contract

 - /Direct contract Argos-Yang Ming

 - /Applicability Argos GTC → Argos “insisted”

- Tort

 - /Using bunkers after notices Argos unlawful

The Dutch perspective

- Court of Amsterdam rejects both claims

CLAIM DENIED

The Dutch perspective

- No direct contract with Yang Ming
- The BDN only serves as receipt
- Wording Bunker Requisition insufficient

The Dutch perspective

- No direct contract with Yang Ming

- No “insisting” by Argos

/If so, applicability Argos GTC only between
O.W. Bunker-Yang Ming

The Dutch perspective

- Yang Ming/Yang Ming Transport have not acted unlawfully
 - Explicit consent to use the bunkers
 - No proper execution of the retention of title by Argos
- /If so, the continued use may have been unlawful

Conclusion

Conclusion

- Some clarity; contractual claims of physical suppliers are excluded in NL
- Still a risk of double payment
- Silver lining; legal discussion narrowed down



Thank you for your attention

