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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
) No. 3-84-02038-TC
) Chapter 11
SEAWINDS LIMITED,)
a corporation,)
Debtor.) **MEMORANDUM RE CLAIMS OF**
OVERSEAS CONTAINERS LTD.

The court held a hearing on April 19, 1999 on Debtor's objection to claims filed by Overseas Containers Ltd.(OCL). Terrence L. Stinnett appeared for Debtor. Cynthia L. Mitchell appeared for OCL. Upon due consideration, and for the reasons stated below, I determine that any allowable administrative claim has been paid in full, and that OCL has an allowed unpaid unsecured claim in the amount of \$493,269.

FACTS

Debtor was an overseas shipper, operating ocean-going cargo vessels it chartered from vessel owners. One of these vessels, the M/V Orient Winds, was chartered from creditor OCL. Debtor

1 generally ceased operations after filing a chapter 11 petition on
2 October 25, 1984. Debtor did, however, complete the voyages of
3 ships that were in passage. The Orient Winds was one of the
4 vessels on the high seas on the petition date. The major dispute
5 between Debtor and OCL concerns the treatment of claims of OCL
6 that arose during the completion of the Orient Wind's voyage from
7 the Far East to Long Beach, California.

8 OCL has already received \$667,808 in satisfaction of its
9 claims. Debtor had given OCL a prepetition lien on freight
10 charges earned by the Orient Winds to secure repayment of all
11 sums due under the charter. Debtor collected those freights
12 postpetition and placed them into a trust account. Pursuant to
13 a stipulation approved by the court, all the trust funds were
14 distributed to OCL.

15 OCL seeks allowance of an administrative priority claim
16 in the amount of \$158,573. This claim consists of the following
17 elements. First, OCL seeks \$87,232 in charter fees for post-
18 petition use of the vessel. Second, OCL seeks \$68,674 for fuel
19 consumed postpetition. OCL contends it is entitled to be paid
20 for the fuel, even though the fuel was purchased by Debtor,
21 because Debtor failed to pay for the fuel, the fuel vendor
22 asserted a lien against the vessel, and OCL had to pay for the
23 fuel to secure the release of the vessel. OCL also seeks \$1,000
24 for terminal discharge expenses incurred at Long Beach, and \$1,667
25 OCL provided Debtor to help pay Debtor's office staff in January
26 1985.

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1 Debtor contends that there is no basis to allow the amounts
2 sought for terminal discharge expenses and Debtor's office
3 expenses. Debtor concedes OCL should have an allowed claim for
4 postpetition charter fees and fuel use. Debtor contends, however,
5 that the freights OCL received should be applied to those claims,
6 with the result that those claims would be paid in full.

7 OCL asserts a general unsecured claim in the amount of
8 \$1,033,177. This claim consists of the following elements.

9	Prepetition charter fees	\$ 213,000
	Prepetition fuel consumption	84,779
10	Port of Oakland	55,000
	Marine Terminals	623,000
11	A.J Fritz	925
	<u>Attorneys fees</u>	<u>55,673</u>
12	Total	\$1,033,177

13 Of these items, Debtor challenges only the amount sought for
14 attorneys fees and costs. Debtor contends that no more than
15 \$25,000 should be allowed for fees and costs.

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17 **DISCUSSION**

18 **A. EXPENSE OF ADMINISTRATION CLAIM**

19 I determine that OCL has no unpaid administrative priority
20 claim.

21 To be entitled to expense of administration priority, OCL's
22 claim must represent "the actual, necessary costs and expenses of
23 preserving the estate." 11 U.S.C. § 503(b)(1)(A). The OCL claim
24 meets this standard only if completion of the voyage was necessary
25 to earn freights. No other property of the estate was created or
26 preserved or by completion of the voyage. If completion of the
27 voyage was necessary to earn the freights, however, Debtor is

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1 entitled to use those freights to pay any amount it would be
2 required to pay OCL as an expense of administration claim.
3 Section 506(c) of the Bankruptcy Code provides: "The trustee
4 may recover from property securing an allowed secured claim
5 the reasonable, necessary costs and expenses of preserving, or
6 disposing of, such property to the extent of any benefit to the
7 holder of such claim." 11 U.S.C. § 506(c). The freights were
8 collateral securing OCL's claims. To the extent that completion
9 of the voyage was necessary to collect the freights, the expenses
10 of completing the voyage were necessary expenses of preserving
11 OCL's collateral.

12 Thus, Debtor can compel OCL to apply the freights it received
13 to pay any allowable administrative claim of OCL. Because the
14 freight payments exceed the administrative claim asserted by OCL,
15 any administrative claim has been paid in full.

16 In light of this determination, there is no need to treat
17 separately the pre- and postpetition claims of OCL. The claims
18 should be combined and the freights paid to OCL treated as a
19 credit against this consolidated general unsecured claim.

20 **B. GENERAL UNSECURED CLAIM**

21 1. **Attorneys fees.** OCL seeks \$55,673 in attorneys fees
22 and costs as part of its general unsecured claim. It appears
23 that the basis for the recovery of fees is paragraph 68 of the
24 time charter. That paragraph provides that Debtor shall indemnify
25 OCL against all claims asserted against the vessel as a result of
26 Debtor's use of the vessel, and against all expenses incurred in
27 eliminating such claims against the vessel.

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1 Debtor acknowledges that OCL incurred substantial legal fees
2 and expenses in removing liens against the vessel, but contends
3 that the \$55,673 sought by OCL is excessive. Debtor notes that
4 the billing statements submitted by OCL's counsel are not broken
5 down by project and do not contain contemporaneous time records.
6 Debtor asks the court to award no more than \$25,000.

7 I determine that the attorney billing records submitted in
8 support of the claim are not sufficiently detailed to permit this
9 court to determine the amount of fees properly recoverable under
10 paragraph 68. On the basis of the present application, therefore,
11 the court cannot grant fees in excess of the \$25,000 stipulated by
12 Debtor. The remainder of OCL's claim for attorneys fees and
13 expenses is denied. The denial is without prejudice, except as
14 noted in footnote 1, below.

15 **2. Debtor's office expenses.** OCL seeks reimbursement for
16 \$1,667 it provided Debtor to help pay for Debtor's office staff
17 in January 1985. Debtor objects to this claim on the basis that
18 the payment was a voluntary contribution to Debtor, not a loan.

19 I determine that the expenses represent an allowable claim
20 for expenses under paragraph 68 of the time charter. Debtor
21 acknowledges that OCL provided the money to Debtor to get Debtor's
22 help in locating certain containers, so that the container owners
23 would not assert liens against the vessel. So described, the
24 money paid Debtor gives rise to an allowable claim under

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1 paragraph 68, just as it would if OCL had paid a third party to
2 help locate the containers.^{1/}

3 **3. Terminal discharge fees.** OCL contends that Debtor
4 owes OCL \$1,000 for terminal charges paid to California United
5 Terminals. Debtor objects on the basis that in March 1986 it
6 only agreed to pay \$3,000 for such charges.

7 I determine that the claim should be allowed. Debtor does
8 not dispute that OCL paid the additional \$1,000 to obtain release
9 of the vessel from a lien that arose as a result of Debtor's use
10 of the vessel. Debtor contends only that OCL paid \$1,000 more
11 than necessary for that purpose. OCL's papers establish that the
12 payment in question was necessary to secure release of the vessel.

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25 ^{1/} These expenses were also included in OCL's claim for
26 legal fees. Because Debtor contends there is no basis for OCL
27 to recover these expenses, I assume the \$25,000 of attorneys
28 fees and costs Debtor stipulated to do not include these expenses.
Because the expenses have been allowed apart from the claim for
fees and costs, denial of OCL's claim for additional attorneys
fees and costs is with prejudice regarding these expenses.

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4. Calculation of allowed claim.

Charter fees-prepetition	\$ 213,800
Charter fees-postpetition ^{2/}	87,232
Fuel-prepetition ^{3/}	84,779
Fuel-postpetition ^{4/}	68,674
Marine terminals	623,000
Port of Oakland	55,000
A.J. Fritz	925
Long Beach terminal ^{5/}	1,000
Debtor's office expenses ^{6/}	1,667
<u>Attorneys fees</u>	<u>25,000</u>
Total	\$1,161,077
<u>Less credit for freight payment</u>	<u>(667,808)</u>
Unpaid allowed claim	\$ 493,269

Dated: _____

 Thomas E. Carlson
 United States Bankruptcy Judge

^{2/} Deemed already paid through credit for reasons set forth in Part A.

^{3/} Total fuel cost of \$235,000 less postpetition fuel used and fuel returned.

^{4/} See note 2.

^{5/} See note 2.

^{6/} See note 2.