

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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<i>In re</i>	:	Chapter 11
	:	
Overseas Shipholding Group, Inc., <i>et al.</i> ,	:	Case No. 12-20000 (PJW)
	:	
Debtors. ¹	:	Jointly Administered
	:	
	:	Hearing Date: May 23, 2014 at 2:00 p.m. (ET)
	:	Objections Due: May 16, 2014 at 4:00 p.m. (ET)
	X	

**DEBTORS' MOTION FOR ENTRY OF AN ORDER PURSUANT TO
SECTIONS 105(A), 363(B), 365(A) AND 1113(E) OF THE BANKRUPTCY CODE
AUTHORIZING (I) A WAGE INCREASE AND RETENTION PLAN FOR
CERTAIN ATB CREW AND (II) AMENDMENT AND ASSUMPTION
OF CERTAIN COLLECTIVE BARGAINING AGREEMENTS**

Overseas Shipholding Group, Inc. ("OSG") and certain of its affiliates, as debtors and debtors in possession (collectively, the "Debtors"), hereby move this Court (the "Motion") for

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's tax identification number, are: Overseas Shipholding Group, Inc. (7623); OSG International, Inc. (7117); OSG Bulk Ships, Inc. (2600); 1372 Tanker Corporation (4526); Africa Tanker Corporation (9119); Alcesmar Limited (5306); Alcmar Limited (5307); Alpha Suezmax Corporation (1684); Alpha Tanker Corporation (6063); Amalia Product Corporation (3808); Ambermar Product Carrier Corporation (8898); Ambermar Tanker Corporation (7100); Andromar Limited (5312); Antigmar Limited (5303); Aqua Tanker Corporation (7408); Aquarius Tanker Corporation (9161); Ariadmar Limited (5301); Aspro Tanker Corporation (4152); Atalmar Limited (5314); Athens Product Tanker Corporation (9565); Atlas Chartering Corporation (8720); Aurora Shipping Corporation (5649); Avila Tanker Corporation (4155); Batangas Tanker Corporation (8208); Beta Aframax Corporation (9893); Brooklyn Product Tanker Corporation (2097); Cabo Hellas Limited (5299); Cabo Sounion Limited (5296); Caribbean Tanker Corporation (6614); Carina Tanker Corporation (9568); Carl Product Corporation (3807); Concept Tanker Corporation (9150); Crown Tanker Corporation (6059); Delphina Tanker Corporation (3859); Delta Aframax Corporation (9892); DHT Ania Aframax Corp. (9134); DHT Ann VLCC Corp. (9120); DHT Cathy Aframax Corp. (9142); DHT Chris VLCC Corp. (9122); DHT Rebecca Aframax Corp. (9143); DHT Regal Unity VLCC Corp. (9127); DHT Sophie Aframax Corp. (9138); Dignity Chartering Corporation (6961); Edindun Shipping Corporation (6412); Eighth Aframax Tanker Corporation (8100); Epsilon Aframax Corporation (9895); First Chemical Carrier Corporation (2955); First LPG Tanker Corporation (9757); First Union Tanker Corporation (4555); Fourth Aframax Tanker Corporation (3887); Front President Inc. (1687); Goldmar Limited (0772); GPC Aframax Corporation (6064); Grace Chartering Corporation (2876); International Seaways, Inc. (5624); Jademar Limited (7939); Joyce Car Carrier Corporation (1737); Juneau Tanker Corporation (2863); Kimolos Tanker Corporation (3005); Kythnos Chartering Corporation (3263); Leo Tanker Corporation (9159); Leyte Product Tanker Corporation (9564); Limar Charter Corporation (9567); Luxmar Product Tanker Corporation (3136); Luxmar Tanker LLC (4675); Majestic Tankers Corporation (6635); Maple Tanker Corporation (5229); Maremar Product Tanker Corporation (3097); Maremar Tanker LLC (4702); Marilyn Vessel Corporation (9927); Maritrans General Partner Inc. (8169); Maritrans Operating Company L.P. (0496); Milos Product Tanker Corporation (9563); Mindanao Tanker Corporation (8192); Mykonos Tanker LLC (8649); Nedimar Charter Corporation (9566); Oak

entry of an order (the “Proposed Order”), substantially in the form attached hereto as Exhibit D, under sections 105(a), 363(b), 365(a) and 1113(e) of Title 11 of the United States Code (the “Bankruptcy Code”): (i) authorizing, to the extent required, the payment of the Wage Increase (as defined below) to the ATB Crew (as defined below); (ii) authorizing the implementation of the Retention Plan (as defined below) for eligible ATB Crew (as defined below); (iii) authorizing the Debtors to enter into the AMO Amendment (as defined below), substantially in the form attached hereto as Exhibit B; (iv) authorizing the Debtors to enter into the SIU Amendment (as defined below), substantially in the form attached hereto as Exhibit C; (v) authorizing the Debtors to assume and perform their obligations under the AMO CBA (as defined below), as

Tanker Corporation (5234); Ocean Bulk Ships, Inc. (6064); Oceania Tanker Corporation (9164); OSG 192 LLC (7638); OSG 209 LLC (7521); OSG 214 LLC (7645); OSG 215 Corporation (7807); OSG 242 LLC (8002); OSG 243 LLC (7647); OSG 244 LLC (3601); OSG 252 LLC (7501); OSG 254 LLC (7495); OSG 300 LLC (3602); OSG 400 LLC (7499); OSG America LLC (2935); OSG America L.P. (2936); OSG America Operating Company LLC (5493); OSG Car Carriers, Inc. (1608); OSG Clean Products International, Inc. (6056); OSG Columbia LLC (7528); OSG Constitution LLC (8003); OSG Courageous LLC (2871); OSG Delaware Bay Lightering LLC (4998); OSG Discovery LLC (8902); OSG Endeavor LLC (5138); OSG Endurance LLC (2876); OSG Enterprise LLC (3604); OSG Financial Corp. (8639); OSG Freedom LLC (3599); OSG Honour LLC (7641); OSG Independence LLC (7296); OSG Intrepid LLC (7294); OSG Liberty LLC (7530); OSG Lightering Acquisition Corporation (N/A); OSG Lightering LLC (0553); OSG Lightering Solutions LLC (5698); OSG Mariner LLC (0509); OSG Maritrans Parent LLC (3903); OSG Navigator LLC (7524); OSG New York, Inc. (4493); OSG Product Tankers AVTC, LLC (0001); OSG Product Tankers I, LLC (8236); OSG Product Tankers II, LLC (8114); OSG Product Tankers, LLC (8347); OSG Product Tankers Member LLC (4705); OSG Quest LLC (1964); OSG Seafarer LLC (7498); OSG Ship Management, Inc. (9004); OSG Valour Inc. (7765); Overseas Allegiance Corporation (7820); Overseas Anacortes LLC (5515); Overseas Boston LLC (3665); Overseas Diligence LLC (6681); Overseas Galena Bay LLC (6676); Overseas Houston LLC (3662); Overseas Integrity LLC (6682); Overseas Long Beach LLC (0724); Overseas Los Angeles LLC (5448); Overseas Martinez LLC (0729); Overseas New Orleans LLC (6680); Overseas New York LLC (0728); Overseas Nikiski LLC (5519); Overseas Perseverance Corporation (7817); Overseas Philadelphia LLC (7993); Overseas Puget Sound LLC (7998); Overseas Sea Swift Corporation (2868); Overseas Shipping (GR) Ltd. (5454); Overseas ST Holding LLC (0011); Overseas Tampa LLC (3656); Overseas Texas City LLC (5520); Pearlmar Limited (7140); Petromar Limited (7138); Pisces Tanker Corporation (6060); Polaris Tanker Corporation (6062); Queens Product Tanker Corporation (2093); Reymar Limited (7131); Rich Tanker Corporation (9147); Rimar Chartering Corporation (9346); Rosalyn Tanker Corporation (4557); Rosemar Limited (7974); Rubymar Limited (0767); Sakura Transport Corp. (5625); Samar Product Tanker Corporation (9570); Santorini Tanker LLC (0791); Serifos Tanker Corporation (3004); Seventh Aframax Tanker Corporation (4558); Shirley Tanker SRL (3551); Sifnos Tanker Corporation (3006); Silvermar Limited (0766); Sixth Aframax Tanker Corporation (4523); Skopelos Product Tanker Corporation (9762); Star Chartering Corporation (2877); Suezmax International Agencies, Inc. (4053); Talara Chartering Corporation (3744); Third United Shipping Corporation (5622); Tokyo Transport Corp. (5626); Transbulk Carriers, Inc. (6070); Troy Chartering Corporation (3742); Troy Product Corporation (6969); Urban Tanker Corporation (9153); Vega Tanker Corporation (3860); View Tanker Corporation (9156); Vivian Tankships Corporation (7542); Vulpecula Chartering Corporation (8718); Wind Aframax Tanker Corporation (9562). The mailing address of the Debtors is: 1301 Avenue of the Americas, 42nd Floor, New York, NY 10019.

amended by the AMO Amendment; (vi) authorizing the Debtors to assume and perform their obligations under the SIU CBA (as defined below), as amended by the SIU Amendment; and (vii) granting such other and further relief as may be just and proper. In support of this Motion, the Debtors rely upon and incorporate by reference the Declaration of Captain Robert E. Johnston in Support of Debtors' Motion for Entry of an Order Pursuant to Sections 105(a), 363(b), 365(a) and 1113(e) of the Bankruptcy Code Authorizing (i) a Wage Increase and Retention Plan for Certain ATB Crew and (ii) Amendment and Assumption of Certain Collective Bargaining Agreements (the "Johnston Declaration"), attached hereto as Exhibit A. In further support of this Motion, the Debtors, by and through their undersigned counsel, respectfully represent as follows:

Preliminary Statement

1. As the Debtors continue to prepare for emergence from these bankruptcy proceedings, one of the most vital elements to their successful reorganization will be their ability to attract and retain first-rate crews to operate their vessels. While the Debtors have historically been able to achieve this goal, recent industry trends have created certain hiring and retention challenges, particularly with regard to the Debtors' fleet of articulated tug barges ("ATBs"). First, over the last several years, industry wages have increased dramatically, causing the Debtors to trail their competitors in average ATB crew wages. Moreover, the industry has experienced increased competition from off-shore support vessels and other petroleum tank vessels, placing further constraints on the Debtors' ability to attract and retain the men and women who operate their ATBs. In some cases, these forces have led the Debtors' competitors to provide sign-on and retention bonuses to their crew members, which the Debtors traditionally have not offered. These issues are most acute in the Debtors' ATB fleet, where the age of the vessels means the working conditions are less comfortable and feature fewer amenities than are

offered by more modern vessels. As a result of these factors, the Debtors face a critical shortage of qualified ATB crew members and can afford no further attrition. Indeed, on several occasions, crew shortages have threatened the Debtors' ability to conduct a voyage.

2. For these reasons, the Debtors have determined that it is in the best interests of their creditors, estates and other parties-in-interest to provide to certain of their ATB crew members, either directly or through the Amendments (as defined below) to the collective bargaining agreements with the relevant Unions (as defined below), (i) a modest increase in wages (the "Wage Increase") and (ii) a retention bonus plan pursuant to which retention bonuses will be payable at the end of a 36-month period (the "Retention Plan"). The Debtors anticipate that the Wage Increase will comprise a modest annual cost of approximately \$780,000, and the Retention Plan a modest annual cost of approximately \$1.7 million. Thus, through payments totaling approximately \$2.5 million per year—an expense per ATB of just \$735 a day—the Debtors will be able to more closely align their compensation with industry standards and practices, ensuring that the Debtors can maintain the high caliber of service that has been crucial to their past success and bolstering their prospects for a successful emergence.

Jurisdiction

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 363(b), 365(a) and 1113(e), as supplemented by Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

Background

5. On November 14, 2012 (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

6. The Debtors own or operate approximately 80 tankers around the world, enabling the safe and efficient transport of oil and petroleum products. OSG is one of the largest publicly traded tanker holding companies worldwide, based on the number of vessels, and is the only major tanker holding company with both a significant U.S. Flag and international fleet. A fulsome description of the Debtors’ corporate structure and the events leading to the Chapter 11 Cases is set forth in the Declaration of Captain Robert E. Johnston in Support of First Day Motions and Applications (D.I. 2) (the “First Day Declaration”), as filed with the Court on November 14, 2012.

7. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors’ Chapter 11 cases.

8. The Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) has appointed an Official Committee of Unsecured Creditors (the “Committee”) in respect of the Debtors (D.I. 97), and an Official Committee of Equity Security Holders (the “Equity Committee”) on March 17, 2014 (D.I. 2641).

Facts Relevant to This Motion

9. As discussed in the Johnston Declaration, ATBs are vessels that combine a normal barge with a bow resembling that of a ship, but have a deep indent at the stern to accommodate the bow of a tug. The resulting combination behaves almost like a single vessel. The Debtors currently operate 10 ATBs, eight in the Gulf Coast and two in the Delaware Bay. The Gulf Coast ATBs each operate with eight or nine crew members: one captain, one chief

mate, one second mate, one temporary training third mate, one chief engineer, one assistant engineer, two able bodied tankermen (the “AB/tankermen”) and one cook.² The Delaware Bay ATBs each operate with the same arrangement, but with one additional second mate and two additional assistant engineers. None of the ATB crew members is an “insider” of the Debtors within the meaning of section 101(31) of the Bankruptcy Code.³ The ATBs form a vital part of the Debtors’ businesses in the geographic segments in which they operate. Indeed, in 2013, the ATB fleet produced approximately \$152 million in revenue for the Debtors’ estates.

10. The union affiliation of each ATB crew member varies by position. The assistant engineers are members of the American Maritime Officers Union (the “AMO”) and their wages are governed by the AMO collective bargaining agreement (the “AMO CBA”); the AB/tankermen (together with the assistant engineers, the “Union Workers”) are members of the Seafarers International Union (the “SIU” and, together with the AMO, the “Unions”) and their wages are governed by the SIU collective bargaining agreement (the “SIU CBA” and, together with the AMO CBA, the “CBAs”); and the captains, chief mates, second mates, third mates and chief engineers (collectively, the “ATB Crew”) are not union members.⁴

11. As discussed above, certain industry pressures, such as increased competition and a recent climb in average compensation, have caused the Debtors to begin to fall behind their competitors in ATB crew compensation, which in turn has created challenges in hiring and retaining ATB crew members. The recent rise in industry wage rates has also proven

² ATB cooks will not participate in either the Wage Increase or the Retention Plan.

³ As further discussed below, the Bankruptcy Code defines an “insider” of a debtor corporation as a “(i) director of the debtor; (ii) officer of the debtor; (iii) person in control of the debtor; (iv) partnership in which the debtor is a general partner; (v) general partner of the debtor; or (vi) relative of a general partner, director, officer, or person in control of the debtor.” 11 U.S.C. § 101(31)(B). None of the ATB crew members fits into any of these categories.

⁴ Although the ATB Crew do not belong to a union, they receive their benefits through the AMO, and the Debtors make flat-rate contributions per member of the ATB Crew in respect of such benefits. Because the Debtors’ contributions are not wage-based, they will not be affected by the proposed Wage Increase or the Retention Plan.

problematic because the wages of the Union Workers are set in three-year contracts, and the current contract followed a 2011 wage freeze for ATB crew members. In addition, while certain of the Debtors' competitors pay sign-on and retention bonuses to their ATB crew members, the Debtors traditionally have not offered such payments, which has further exacerbated this problem. As a result, the Debtors have experienced increasingly sharp attrition among ATB crew members in recent years.

12. For these reasons, the Debtors have decided to implement the Wage Increase and Retention Plan. In the case of the ATB Crew, these changes can be effectuated independently by the Debtors (subject to Court approval, to the extent required), but in the case of the Union Workers, these changes must be effectuated through amendments to the AMO CBA (the "AMO Amendment") and to the SIU CBA (the "SIU Amendment" and, together with the AMO Amendment, the "Amendments") between the Debtors and the Unions. In recognition of this process, the Debtors approached the Unions to discuss amending the CBAs to incorporate the proposed Wage Increase and Retention Plan. Following a period of good-faith, arms-length consultations and negotiations, the Unions and the Debtors have negotiated and agreed upon the Wage Increase and Retention Plan, as embodied in the Amendments.

13. The Debtors' proposed Wage Increase will raise the daily wage rates of the ATB Crew and Union Workers on the Debtors' eight Gulf Coast ATBs by certain defined increments.⁵ Subject to this Court's approval, these higher wage rates will come into effect as of May 1, 2014, and as such will be paid retroactively to the extent required. The Debtors set these increments based on an extensive and careful analysis of both industry standards and the wages

⁵ Because ATBs in the Delaware Bay face a greater complexity and faster pace of operations than do ATBs in the Gulf Coast, the crew members of Delaware Bay ATBs enjoy higher wages and the Debtors have not experienced the same issues in attracting ATB crew members in this segment. For this reason, the Wage Increase will only apply to the crew members of the Debtors' eight Gulf Coast ATBs.

offered by the Debtors' peers. The Wage Increase will conform the Debtors' ATB wage rates to these benchmarks, ensuring the Debtors' ability to continue to attract first-rate crew members in an increasingly competitive market. Collectively, the Wage Increase will cost the Debtors only an additional \$267.36 per vessel per day, or an annual cost of \$780,700.69.⁶

14. The Retention Plan that the Debtors seek to implement will provide for the payment of retention bonuses to the eligible ATB Crew and Union Workers of the Debtors' entire ATB fleet.⁷ The Retention Plan will cover the 36-month period from January 1, 2014 through December 31, 2016 (the "Retention Period"), and retention bonuses thereunder will only be paid to those eligible ATB Crew and Union Workers that (i) have at least 160 days of service in each of the three calendar years that make up the Retention Period⁸ and (ii) are employed by the Debtors on December 31, 2016. To the extent an eligible member of the ATB Crew or Union Worker is hired after January 1, 2014, or is terminated owing to fleet reduction, such crew member will receive a pro-rata bonus based on the number of quarters he or she was employed continuously by the Debtors. Since different crew members are eligible for different bonuses depending on their position, similar adjustments will be made if a crew member is promoted during the Retention Period.

15. Retention bonuses earned pursuant to the Retention Plan, including any pro-rata bonuses earned thereunder, as applicable, will be paid out as a one-time, non-precedential

⁶ Owing to the competitive and confidential nature of the details of the proposed Wage Increase and Retention Plan, the Debtors have only disclosed aggregate costs of these programs and have filed a motion contemporaneously herewith seeking authority to file the Amendments, which contain certain of this information, under seal. However, full details of the Wage Increase and Retention Plan and their impact on individual members of the ATB Crew and Union Workers have been provided to the Committee and the Equity Committee.

⁷ Because third mate is generally a temporary training position, third mates will not take part in the Retention Plan.

⁸ The Debtors, at their sole discretion, can reduce the 160-day requirement for a member of the ATB Crew or Union Worker.

payment in the first quarter of 2017. The Retention Plan will entail a total cost of approximately \$1.7 million per year, representing a cost per vessel per day of only \$468.00.

16. Thus, through payments totaling approximately \$2.5 million per year (an expense per vessel of just \$735 a day), the Debtors will be able to continue to attract and retain the first-rate ATB crew members who are essential to the success of the Debtors' operations in this crucial section of their U.S. Flag fleet. Moreover, by bringing the Debtors' wage rates in line with industry standards, the Wage Increase and Retention Plan will enable the Debtors to properly compensate the crew members who form the backbone of their ATB operations. These programs will thus allow the Debtors not only to maintain their prominent position in the ATB segment, but also to continue on their path toward a successful emergence.

Relief Requested

17. By this Motion, the Debtors respectfully request that this Court enter an order substantially in the form attached hereto as Exhibit D (i) authorizing, to the extent required, the payment of the Wage Increase to the ATB Crew; (ii) authorizing the implementation of the Retention Plan for the eligible ATB Crew; (iii) authorizing the Debtors to enter into the AMO Amendment; (iv) authorizing the Debtors to enter into the SIU Amendment; (v) authorizing the Debtors to assume and perform their obligations under the AMO CBA, as amended; (vi) authorizing the Debtors to assume and perform their obligations under the SIU CBA, as amended; and (vii) granting such other and further relief as may be just and proper.

Basis for Relief

A. Implementing the Wage Increase and Retention Plan for the ATB Crew, and Entering into the Amendments which Provide Such Programs for the Union Workers, Satisfies the Standards of Sections 363(b) and 503(c)(3) of the Bankruptcy Code.

18. Section 363(b)(1) of the Bankruptcy Code provides that the “trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” Section 363(c)(1) of the Bankruptcy Code provides that:

If the business of the debtor is authorized to be operated under section . . . 1108 . . . of this title and unless the Court orders otherwise, the trustee may enter into transactions . . . in the ordinary course of business, without notice or hearing and may use the property of the estate in the ordinary course of business without notice or a hearing.

19. Assuming arguendo that sections 363(b)(1) and 503(c)(3) do apply,⁹ the Court should approve the Debtors implementation of the Wage Increase and Retention Plan for the ATB Crew, and related entry into the Amendments to provide these programs to the Union Workers, because the Debtors demonstrate a “sound business purpose” for doing so. See In re Montgomery Ward Holding Co., 242 B.R. 147, 153 (D. Del. 1999) (“In evaluating whether a sound business purpose justifies the use, sale or lease of property under section 363(b), courts consider a variety of factors, which essentially represent a ‘business judgment test.’”); In re Del. Hudson Ry. Co., 124 B.R. 169, 177 (D. Del. 1991). In order to pass this test, a debtor must present some evidence that the proposed action is justified by “a good business reason,” or, in other words, that the action will “aid the debtor’s reorganization.” In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983) (quoted with approval in In re Montgomery Ward, 242 B.R. at 153-

⁹ The Debtors believe that implementing the Wage Increase and Retention Plan (and entering into the Amendments that provide for the same) is in the ordinary course of the Debtors’ business, which relies on occasionally revising compensation to crew members to align with industry standards and practices, and as such does not implicate either sections 363(b)(1) or 503(c)(3). Nevertheless, as the Debtors also seek to assume the CBAs, as amended, the Debtors seek an order of this Court allowing them to enter into the Amendments and assume and perform under the CBAs, as amended, pursuant to sections 363(b)(1), 365 and 1113, as discussed below.

54). The business judgment test is the same test used to evaluate transfers under 11 U.S.C. 503(c)(3).¹⁰ See In re Nobex Corp., No. 05-20050(MFW), 2006 WL 4063024, at *3 (Bankr. D. Del. Jan. 19, 2006); In re Dana Corp., 358 B.R. 567, 576-77 (Bankr. S.D.N.Y. 2006); In re Silicon Graphics, Inc., Case No. 06-10977 (BRL) (Bankr. S.D.N.Y. July 27, 2006).

20. The Debtors' implementation of the Wage Increase and Retention Plan, and related entry into the Amendments that embody these programs, satisfies the sound business judgment test of sections 363(b)(1) and 503(c)(3) because these programs will aid the Debtors' reorganization. The Wage Increase and Retention Plan serve a crucial purpose to the Debtors' continued ability to attract and retain top-flight crews for their ATB fleet, and by extension to the Debtors' continued success in a key segment of their businesses. For a limited cost, the Wage Increase and the Retention Plan will allow the Debtors to maintain their strong position across multiple geographic markets, which will inure to the benefit of their creditors, estates and other parties in interest.

B. The Amendments to the CBAs Should Be Approved Pursuant to Section 1113(e) of the Bankruptcy Code.

21. Section 1113(e) provides that while a collective bargaining agreement continues in effect, a court may authorize the implementation of interim changes to the terms, conditions, wages, benefits or work rules provided by such collective bargaining agreement if such changes are "essential to the continuation of the debtor's business, or in order to avoid irreparable damage to the estate." See 11 U.S.C. § 1113(e). A debtor must meet only one of these standards for relief under section 1113(e) to be appropriate. See In re United Press Int'l, Inc., 134 B.R. 507, 514 (Bankr. S.D.N.Y. 1991) ("There is a difference between the continuation of the debtor's

¹⁰ Section 503(c)(3) provides that there shall be no allowable administrative expenses for "transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition." 11 U.S.C. § 503(c)(3).

business and irreparable damage to the estate. . . . [A] debtor need only meet one of the statutory standards without having met the other”).

22. In the present case, both standards under section 1113(e) argue in favor of approval of the Amendments. As discussed above, the sharp attrition the Debtors have faced among their ATB crew members and the Debtors’ difficulty in attracting new crew members as replacements have at times jeopardized the Debtors’ ability to undertake voyages. The Debtors therefore seek to enter into the Amendments—which represent only a net benefit to the Union Workers and the terms of which the Unions and the Union Workers have agreed to—in an effort to preserve their ATB business. Absent the Amendments, the Debtors’ ability to continue to conduct their ATB business in the Gulf of Mexico and the Delaware Bay will be seriously threatened. In addition, the Debtors’ ATB business generated net revenue in 2013 of over \$150 million. The risk to the Debtors’ estates that is represented by the potential loss of this reliable revenue stream is significant. For these reasons, the Amendments to the CBAs should be approved pursuant to section 1113(e).

C. Assumption of the CBAs Is Appropriate Pursuant to Section 365(a) of the Bankruptcy Code Because It Is in the Best Interests of the Debtors’ Estates.

23. While a literal reading of section 1113(a) indicates that section 1113 applies to the assumption of collective bargaining agreements, a debtor’s assumption of collective bargaining agreements is properly governed by section 365(a)—not section 1113—of the Bankruptcy Code. See Am. Flint Glass Workers Union v. Anchor Resolution Corp., 197 F.3d 76, 82 (3d Cir. 1999) (holding that section 365 governs the assumption of collective bargaining agreements). This must be the case since section 1113 does not provide any guidance regarding the assumption, rather than the rejection, of collective bargaining agreements. See Am. Flint, 197 F.3d at 82 (“It is surely no accident that Code §1113 is entitled ‘Rejection of collective bargaining agreements’.

. . . We are persuaded that Code §365 and not Code §1113 is the applicable provision.”).

Accordingly, the Debtors’ assumption of the CBAs should be evaluated pursuant to the standards set forth in section 365(a) of the Bankruptcy Code.

24. Section 365(a) of the Bankruptcy Code provides that a trustee, “subject to the court’s approval, may assume or reject an executory contract or an unexpired lease.” 11 U.S.C. § 365(a); see also Univ. Med. Ctr. v. Sullivan (In re Univ. Med. Ctr.), 973 F.2d 1065, 1075 (3d Cir. 1992). Section 1107 of the Bankruptcy Code provides the same power to a debtor-in-possession. 11 U.S.C. § 1107; In re Univ. Med. Ctr., 973 F.2d at 1075 n.12.

25. When determining whether to approve a debtor’s decision to assume or reject an executory contract or unexpired lease, courts apply the “business judgment” rule. See NLRB v. Bildisco & Bildisco (In re Bildisco), 682 F.2d 72, 79 (3d Cir. 1982). In order to assume a lease, a debtor-in-possession must make the determination to assume as an exercise of the debtor-in-possession’s sound business judgment. In re ANC Rental Corp., Inc., 278 B.R. 714, 723 (Bankr. D. Del. 2002) (citing In re Montgomery Ward, 242 B.R. at 153).

26. A court’s review of a decision to assume is a deferential one. See In re Bullet Jet Charter, Inc., 177 B.R. 593, 601 (Bankr. N.D. Ill. 1995) (“The bankruptcy judge should have a deferential view of the debtor’s business judgment in this regard, but need not accept that judgment blindly.”). The decision to assume need not be perfect or precise; instead it must only stem from sources other than the product of bad faith, gross abuse of discretion, whim or caprice. Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.), 756 F.2d 1043, 1046-47 (4th Cir. 1985); see In re Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997) (“[A] court will ordinarily defer to the business judgment of the debtor’s management,”); In re Chipwich, Inc., 54 B.R. 427, 430-31 (Bankr. S.D.N.Y. 1985) (finding

a court should not interfere with a debtor's decision to assume or reject "absent a showing of bad faith or abuse of business discretion").

27. The Debtors have determined, in their sound business judgment, that it is in the best interests of the Debtors, their estates and their creditors to assume and perform under the CBAs, as amended. As noted in the Johnston Declaration and above, the Wage Increase and Retention Plan, as codified for Union Workers in the Amendments, are vital to the Debtors' ongoing ATB operations and efforts to maximize value for the benefit of all stakeholders. By assuming the CBAs, as amended, the Debtors bolster their continued success in a vital aspect of their businesses across multiple geographic segments. Therefore, the Debtors have determined, in the exercise of their sound business judgment, that assumption of the CBAs, as amended, is in the best interests of their estates, creditors and all parties in interest.

D. Section 503(c)(1) of the Bankruptcy Code Does Not Apply to the Wage Increase, Retention Plan or Amendments.

28. Section 503(c) of the Bankruptcy Code provides in part that "there shall neither be allowed nor paid—(1) a transfer made to, or an obligation incurred for the benefit of, an insider of the debtor for the purpose of inducing such person to remain with the debtor's business, absent [certain circumstances]." 11 U.S.C. § 503(c)(1). The Wage Increase and Retention Plan (and the Amendments that embody them) do not apply to any insiders and so do not implicate section 503(c)(1) for that reason alone. Furthermore, retention is justified in this instance by the Debtors' present circumstances.

29. As an initial matter, the Wage Increase and Retention Plan (and the Amendments that embody them) do not implicate section 503(c)(1) because they do not include insiders. section 101(31) of the Bankruptcy Code defines "insider" to include only directors, officers, persons in control, partnership in which the debtor is a general partner, general partner, or

relative of the above. 11 U.S.C. § 101(31). Here, the Debtors specifically exclude insiders from the Wage Increase and Retention Plan. The ATB Crew and Union Workers include no one in the categories defined as “insiders” under section 101(31). Section 503(c)(1) therefore is, by its own terms, inapplicable to these programs.

30. Moreover, to the extent the Wage Increase and Retention Plan seek to retain the Debtors’ ATB crew members, retention is justified in this instance by the facts of the case. As discussed above, owing to pressures felt across the shipping industry, the Debtors are facing unprecedented attrition of their ATB crew members. Indeed, this attrition is so severe that it has at times threatened the Debtors’ ability to conduct a voyage. If the Debtors’ fail to retain their ATB crew members, the prospects for their continued success in a key business segment will be seriously undermined. Additionally, the Wage Increase and Retention Plan are firmly in line with industry standards and practices, which makes them even more essential for the Debtors’ continued ability to attract and retain first-rate ATB crew members. For these reasons, section 503(c)(1) should be found not to apply to the proposed Wage Increase and Retention Plan.

E. No Cure or Adequate Assurance of Future Performance Is Required for the Debtors to Assume the CBAs.

31. Section 365(b)(1) of the Bankruptcy Code requires that “[i]f there has been a default in an executory contract or unexpired lease of the debtor,” the debtor cannot assume such executory contract or unexpired lease unless and until the debtor: (i) cures, or provides adequate assurance that the debtor will promptly cure, any outstanding defaults under the executory contract or unexpired lease to be assumed; (ii) compensates, or provides adequate assurance that the debtor will promptly compensate, any non-debtor party to the executory contract or unexpired lease to be assumed for any pecuniary loss resulting from such default; and (iii)

provides adequate assurance of future performance under the executory contract or unexpired lease to be assumed. 11 U.S.C. § 365(b)(1).

32. As of the date of this Motion, the Debtors have complied with all of their material obligations under the CBAs and the Debtors are not aware of any defaults thereunder. Therefore, the Debtors are under no obligation to pay any cure amounts, pay any compensation or provide adequate assurance of future performance. The Debtors are willing and capable of continuing to perform all obligations under the CBAs.

33. In addition, the Debtors have conferred with counsel to the Committee regarding the programs proposed herein and, following appropriate discussion and consultation, the Committee has no objection to the relief requested herein.

Reservation of Rights

34. The Debtors' implementation of the Wage Increase and Retention Plan and assumption of the amended CBAs remains subject to Court approval. The Debtors reserve the right to withdraw this Motion in whole or in part prior to entry of an order approving the above-listed actions (including, without limitation, as a result of a timely-filed objection). Moreover, in the event the Court declines to grant any aspect of the relief sought in this Motion, the Wage Increase and Retention Plan will not have been implemented and the CBAs will not have been assumed, and all of the Debtors' and the Unions' respective rights and defenses will be reserved.

Waiver of Bankruptcy Rule 6004(h)

35. Although Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise," a court may waive this stay period "when there is a sufficient business need to close the transaction." In re Boscov's, Inc., 2008 WL 4975882, *2 (Bankr. D. Del. Nov. 21, 2008).

36. There is no reason to delay the effectiveness of the Proposed Order. The Debtors have worked in good faith, both independently and in cooperation with the Unions, to develop the Wage Increase, Retention Plan and the Amendments to the CBAs so as to improve the Debtors' industry competitiveness with regard to the hiring and retention of crew members for their ATBs. Any additional delay may serve to hinder the Debtors in this important effort, and thus in their ongoing efforts to position themselves for a successful emergence. Accordingly, waiver of the 14-day stay period under Bankruptcy Rule 6004(h) is appropriate.

Notice

37. Notice of the Motion has been given via first class mail and/or hand delivery to (i) the U.S. Trustee; (ii) counsel to the Committee; (iii) counsel to the Equity Committee; (iv) counsel to the AMO; (v) counsel to the SIU; and (vi) the general service list established in these Chapter 11 cases pursuant to Bankruptcy Rule 2002. The Debtors submit that under the circumstances no other or further notice is necessary.

No Prior Request

38. No prior request for the relief sought herein has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request that this Court enter an order substantially in the form attached hereto as Exhibit D (i) granting this Motion and the relief requested herein and (ii) granting such other and further relief as it deems just and proper.

Dated: May 2, 2014
Wilmington, Delaware

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