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HEARING DATE:
February 16, 2017 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	:	Chapter 11
	:	
INTERNATIONAL SHIPHOLDING CORPORATION, *et al.*,[1]	:	Case No. 16-12220 (smb)
	:	
	:	(Jointly Administered)
Debtors.	:	
	:	

CAPITAL ONE, NATIONAL ASSOCIATION'S OBJECTION AND RESERVATION OF RIGHTS WITH RESPECT TO CONFIRMATION OF FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION FOR INTERNATIONAL SHIPHOLDING CORPORATION AND ITS AFFILIATED DEBTORS

Capital One, National Association ("Capital One") submits this objection and reservation of rights with respect to Confirmation of First Amended Joint Chapter 11 Plan of Reorganization for International Shipholding Corporation and its Affiliated Debtors [DOC. 536] (the "Plan"), and respectfully states:[2]

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: International Shipholding Corporation (9662); Enterprise Ship Co. (9059); Sulphur Carriers, Inc. (8965); Central Gulf Lines, Inc. (8979); Coastal Carriers, Inc. (6278); Waterman Steamship Corporation (0640); N.W. Johnsen & Co., Inc. (8006); LMS Ship Management, Inc. (0660); U.S. United Ocean Services, LLC (1160); Mary Ann Hudson, LLC (8478); Sheila McDevitt, LLC (8380); Tower LLC (6755); Frascati Shops, Inc. (7875); Gulf South Shipping PTE LTD (8628); LCI Shipholdings, Inc. (8094); Dry Bulk Australia LTD (5383); Dry Bulk Americas LTD (6494); and Marco Shipping Company PTE LTD (4570).

[2] Capital One is also one of the Senior Facility Lenders to ISC and certain other Debtors under the Senior Facility, as described in the Final DIP Order. This Objection and Reservation of Rights is being filed solely to protect Capital One's rights and interests under the Capital One Facility.

1. The above-captioned debtors and debtors-in-possession (collectively, the "Debtors") each filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, commencing on July 31, 2016 (the "Petition Date"). The Debtors' cases are being jointly administered, and the Debtors remain in possession of their assets and operation of their businesses, each as a "debtor in possession." An official Committee of Unsecured Creditors has been appointed pursuant to 11 U.S.C. § 1102(a) in the Debtors' cases.

FACTS

A. Overview Of Capital One's Facility Claims

2. Prior to the Petition Date, Capital One provided a term loan to LCI Shipholdings, Inc. ("LCI"), one of the Debtors (as successor by assignment from Waterman Steamship Corporation), in the original principal amount of $15,675,000.00 (the "Capital One Facility"). The Capital One Facility is evidenced by, among other things, certain collateral agreements and a Loan Agreement dated as of December 28, 2011, as amended, supplemented, modified, and/or assigned (collectively, the "Capital One Loan Documents").

3. LCI secured its obligations under the Capital One Facility by granting Capital One a first priority lien and security interest in (i) the *M/V Oslo Wave*, Marshall Islands official number 4991, Call Sign V7A66 (the "*Oslo Wave*"), and (ii) certain assets, contracts, and rights related to the *Oslo Wave*, including that certain Bareboat Charter (the "Bareboat Charter"), initially dated December 19, 2014, as amended, between LCI and Oslo Bulk Holding PTE, LTD (collectively, the "Collateral"), some of which constitute cash collateral under 11 U.S.C. § 363 (the "Cash Collateral"), all as more fully described in the Capital One Loan Documents and confirmed in the Final Order (1) Authorizing Debtors to (A) Obtain Post-Petition Financing, (B)

Use Cash Collateral, and (C) Grant Certain Protections to Prepetition Lenders and (2) Granting Certain Related Relief [Doc. 180] (the "Final DIP Order").

4. As of the Petition Date, LCI owed an outstanding principal balance of $5,915,591.48 under the Capital One Facility.

5. The Final DIP Order confirms that Capital One is the holder of a first priority security interest in the Collateral, including the *Oslo Wave* and the Cash Collateral. The Debtors additionally acknowledge in the Final DIP Order that Capital One was substantially oversecured under the Capital One Facility.

6. Section 5(c) of the Final DIP Order also grants Prepetition Secured Parties, including Capital One, Adequate Protection Claims related to, among other things, any diminution in value of their collateral interests as a result of various post-petition events. Section 12 of the Final DIP Order grants those same Prepetition Secured Parties, including Capital One, further adequate protection in the form of replacement liens on all DIP Collateral and superpriority claim status and liens to secure the Adequate Protection Claims, all as more fully set forth therein.

B. Debtor's Disclosure Statement And Plan Confirmation Efforts

7. This Court entered an Order approving the Debtors' Disclosure Statement relating to the Plan on January 10, 2017 [Doc. 517] (the "Disclosure Statement Order").

8. In Section 7.4(e) of the Solicitation Version of the Disclosure Statement [Doc. 537] (the "Disclosure Statement"), the Debtors disclosed that they were engaged in ongoing negotiations with one of their major customers, Nippon Yusen Kaisha ("NYK"),[3] regarding the disposition of four U.S. flagged PCTC Vessels (commonly known as the "PCTC Transaction").

[3] Section 3.1(b), Disclosure Statement states that International Shipholding maintains significant contracts with NYK.

Section 7.4(e) of the Disclosure Statement further described the PCTC Transaction as providing "substantial additional value to the Debtors' estates."

9. The importance of this transaction was also underscored by its inclusion within Article 10.1.4 of the Plan as a "Condition Precedent to Consummation of the Plan." Put simply, confirmation of the Plan is not possible unless and until the Debtors finalize and formalize their agreement regarding the PCTC Transaction (subject to SEACOR's approval, as Agent for the DIP Lenders).

10. Despite the significance of the PCTC Transaction to Plan confirmation, virtually no substantive information regarding the PCTC Transaction was provided in the Disclosure Statement.

11. Recognizing the need for further substantive disclosure, the Debtors stated and agreed in Section 7.4(e) of the Disclosure Statement as follows, in relevant part:

> To the extent the Debtors reach an agreement regarding this transaction prior to January 13, 2017, the Debtors will publicly disclose information regarding the transaction by filing a notice with sufficient detail of the transaction and its positive impact on the Debtors' estates and recoveries under the Plan. However, to the extent the Debtors are unable to reach an agreement regarding such transaction prior to January 13, 2017, the Debtors will file prior to January 20, 2017, updated projections and Plan treatment for affected Classes, which may implicate the risk factor identified in Section 10.1(g) of this Disclosure Statement. Any notice or updated projections and Plan treatment, as applicable, provided pursuant to this paragraph shall be posted to the Case Website maintained by Prime Clerk prior to January 20, 2017, and served upon all parties entitled to receive notice of the Plan Supplement, *allowing all holders of Claims entitled to vote on the Plan to make an informed judgment regarding whether they should vote to accept or reject the Plan*. (*emphasis added*).

12. A final agreement on the PCTC Transaction was not reached by January 13, 2017.

13. Rather than provide updated projections and revised Plan treatments for various affected Classes as promised in the Disclosure Statement, the Debtors instead filed a "Notice Regarding PCTC Transaction" [Doc. 560] (the "PCTC Notice") on January 20, 2017. In the PCTC Notice, the Debtors stated that they were still in negotiations with an NYK affiliate (now NYK Group Americas Inc.) regarding the PCTC Transaction and that such negotiations were in "an advanced stage."

14. The two page PCTC Notice also provides, in relevant part:

> The currently proposed transaction provides that on the Effective Date of the Plan, the Debtors will sell up to four of the PCTC Vessels to NYK. The Debtors believe that the transaction will have a net impact to the estate of no less than $15 million. The proceeds of this transaction will be used to fund the Plan, have been accounted for in the Debtors' feasibility analysis, and are not expected to impact the creditor recoveries set forth in the Disclosure Statement.
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> * * *
>
> Execution of this proposed transaction with NYK will require, among other things, certain approvals and authorizations related to the Maritime Security Program *and the finalization of negotiations on terms acceptable to NYK, the Debtors, and SEACOR*.
>
> (*emphasis added*).

15. On February 2, 2017, the Debtors filed a "Notice of Filing of Plan Supplement Documents" wherein they listed (in Exhibit C) various charter agreements with NYK that the Debtors intend to reject in connection with Plan confirmation and implementation. Upon information and belief, the rejection of these NYK charter agreements should occur in connection with implementation of the PCTC Transaction (once, and if, finalized).

C. Sale Of The *Oslo Wave*

16. On January 31, 2017, this Court entered an Order (I) Authorizing the Debtors to Consummate the Sale of the *Oslo Wave*; (II) Establishing January 1, 2017, as the Effective Date of the Sale of the *Oslo Wave*; (III) Staying Distribution of a Portion of the Proceeds of the Sale Transaction Pending Further Order of the Court; and (IV) Rejecting the Bareboat Charter *Nunc Pro Tunc* to January 1, 2017 [Doc. 587], (the "*Oslo Wave* Sale Order"). The *Oslo Wave* Sale Order allows LCI Shipholdings, Inc. ("LCI") to sell the *Oslo Wave* to Oslo Wave PTE, Ltd. for $3.3 million.

17. Under Section 10 of the *Oslo Wave* Sale Order, within one (1) business day of closing, $2.05 million in sale proceeds must be delivered to Capital One in partial satisfaction of its Capital One Facility Claims. The remaining $1.25 million is required to be wired to a segregated LCI account at closing, subject to any and all liens and/or security interests then existing against the *Oslo Wave* (including the liens of Capital One and the priming liens of the DIP Lenders as set forth in the Final DIP Order), which funds are required to be held pending further order of this Court or until disbursement occurs pursuant to the Final DIP Order.

18. While Capital One understands that the sale of the *Oslo Wave* is very close to occurring, the sale has not yet actually closed and Capital One has not yet received any sale proceeds in partial satisfaction of its Capital One Facility Claims.

SPECIFIC OBJECTIONS TO CONFIRMATION

A. The Debtors Are Not Yet Able To Show That Their Plan Is Feasible

19. Section 1129(a)(11) provides that a court cannot confirm a plan unless the plan "is not likely to be followed by the liquidation, or need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is

proposed in the plan." Both in their pleadings and in their appearances before this Court, the Debtors have revealed that their ability to show feasibility of their Plan is inextricably tied to closing the PCTC Transaction.

20. As noted above, the Disclosure Statement describes the PCTC transaction as providing "substantial additional value to the Debtors' estates."[4] However, neither the Disclosure Statement, the PCTC Notice nor the Plan definitively quantifies that substantial value, describes the transaction that gives rise to that value or identifies the form that such value will take (i.e. cash, debt forgiveness, etc.).

21. Within the Disclosure Statement's section on "Important Risks to Be Considered,"[5] Section 10.1(g) provides in pertinent part:

> The Debtors may be unable to reach an agreement regarding [the PCTC Transaction] that can be consummated on or about the Effective Date, or the terms currently being discussed may materially change. Failure to reach an agreement or a material modification of the terms being discussed could change the treatment of Regions Bank, which may require the Debtors to re-solicit Regions Bank and extend Regions Bank's period to object to confirmation of the Plan, and/or cause the amount of distributions to creditors of each Debtor's estate whose assets secure the Regions Facility and to the holders of the DVB Facility Claims under the Plan to be reduced substantially.[6]

Even though the above language regarding the potential impact of a failure to enter the PCTC Transaction is directed only to the Regions and DVB facilities (suggesting little or no impact elsewhere), the other provisions of the Disclosure Statement are not so limited. As quoted previously, Section 7.4(e) says the update regarding the PCTC Transaction will allow "*all*

[4] Section 7.4(e), Disclosure Statement page 47.
[5] Article X, "Certain Risk Factors to Be Considered," Disclosure Statement page 77, and particularly subsection 10.1(g) on page 79.
[6] Compare Section 10.1(g) in Disclosure Statement, page 76 [Doc. 507] to Section 10.1(g) in Disclosure Statement, page 79 [Doc.537].

holders of Claims" to make an informed decision. The impact of the PCTC Transaction is clearly broader and of significance to all creditors and to the case generally, despite the narrower language of 10.1(g).

22. As noted previously, the PCTC Notice indicates that the Debtors believe an agreement regarding the PCTC Transaction will be reached and the transaction will close. However, being advised that an agreement *potentially* has been reached and being given a "*no less than*" impact quantification is inadequate to prove the feasibility of the Plan. Disclosure needs to be made of the specific and quantifiable impact of the PCTC Transaction placing that information within the context of the totality of the Plan's cash needs and the sources for that cash.

23. As of this writing, the most information given by the Debtors is within Section 5.6 of the Plan, entitled "Sources of Consideration for Plan Distributions." The gist of that provision is that the Debtor will use (a) "Remaining Cash on Hand," (b) the "New Money Capital Infusion," and (c) the "New Senior Debt Facility." Of those three defined terms, New Money Capital Infusion is the only quantified amount ($10.5 million) of funds distinctly available for distribution.[7] The New Senior Debt Facility is quantified at $25 million,[8] but only that portion of the New Senior Debt Facility that is not needed for "Retained New Operating Funds" will be available for Plan disbursements according to Section 1.1.112 of the Plan.[9] No estimates are given for the amount of Remaining Cash on Hand.

[7] See Section 1.1.86 of the Plan.
[8] See Section 1.1.89 of the Plan
[9] Retained Net Operating Funds is defined in Section 1.1.117 of the Plan as the amount "determined jointly by the Debtors and Seacor to account for forecasted operating expenses . . . and cash reserves. . ." In other words, the amounts needed for the business of the Reorganized Debtors will not be disbursed. No quantification is given.

24. Because of the lack of specific, quantified information regarding the PCTC Transaction and the sources and needs of cash under the Plan generally, the Debtors are not yet able to show feasibility of their Chapter 11 Plan.

25. In fact, the lack of disclosure goes beyond a simple impact on confirmation of the Plan – the Debtors' own disclosures expressly state that the PCTC Transaction is so important that creditors cannot meaningfully assess the Plan without specific information regarding the PCTC Transaction and its impact on the Plan. Despite the approval of the Disclosure Statement by the Court, the creditors are without adequate information with which to make an intelligent decision about the Plan.

26. Until the PCTC Transaction is finalized and its financial impact fully disclosed, not only should the Plan not be confirmed, but creditors should not yet be required to vote to accept or reject on the Plan.

27. **PROPOSED REMEDY: First**, the Debtors must disclose if they have "entered into an agreement for the disposition of the U.S. flagged PCTC Vessels"[10] thus fulfilling that condition precedent to confirmation. **Second**, the Debtors must describe the PCTC Transaction and provide specific and quantified information regarding the financial impact of the PCTC Transaction. **Third**, the Debtors must provide specific, quantified information regarding claims against the Debtors, the totality of cash needs to consummate the Plan and the source of such cash.

[10] Section 10.1.4, Plan page 46.

B. As Currently Drafted, The Plan Does Not Treat Capital One's Secured Claim (Class 4(o)) Fairly And Equitably

28. Section 3.3.4 of the Plan contains the provisions for Class 4 – the Capital One Facility Claims. In essence, the Plan provides that Capital One will either receive the proceeds of any disposition of its collateral or delivery of its collateral.[11]

29. As noted above, Capital One's primary collateral is the *Oslo Wave* and the Bareboat Charter. Under the *Oslo Wave* Sale Order, the Bareboat Charter will be terminated and the *Oslo Wave* will be sold. Although the *Oslo Wave* Sale Order has been entered, the sale of the *Oslo Wave* has not yet closed and no proceeds have been disbursed to Capital One. Under the *Oslo Wave* Sale Order, $1.25 million of the proceeds will be held by LCI until further order of the Court or until disbursement occurs pursuant to the Final DIP Order.[12]

30. In order for a plan to be confirmed over the objection of a secured creditor whose collateral is being sold, Section 1129(b)(2)(A) of the Bankruptcy Code requires that the secured creditor must receive the proceeds of the sale or its "indubitable equivalent."

31. While the *Oslo Wave* Sale Order provides a distribution scheme of the sale proceeds to Capital One, the Plan does not.

32. Unless and until the Plan specifically provides for the delivery of the entirety of the proceeds of the sale of the *Oslo Wave* to Capital One, Capital One will not have received fair and equitable treatment under the Plan.

[11] Section 3.3.4 of the Plan, page 23-24.
[12] The *Oslo Wave* Sale Order states that Capital One's $1.25 million "shall only be released (i) upon further order of the Bankruptcy Court (which may be an order confirming a plan of reorganization) authorizing the withdrawal of such funds, free and clear of all liens and encumbrances, or (ii) pursuant to the terms of the Final DIP Order."

33. Additionally, pursuant to the Final DIP Order, Capital One is entitled to an adequate protection lien over "all DIP Collateral."[13] The Plan must preserve to Capital One all of its rights under the Final DIP Order, including all liens and priority interests until such time as Capital One has received payment in full of its Claims.

34. The Plan as it is currently drafted does not treat Class 4 and the secured claim of Capital One fairly and equitably.

35. **PROPOSED REMEDY: First**, Section 3.3.4(a) of the Plan must be modified to provide for the specific allowance of the Capital One Facility Claims in the amount of $5,915,591.48, minus the amount of repayment (if any) of principal prior to the Effective Date. **Second**, since the Plan the Debtors are seeking to confirm does not trigger Seacor's exercise of its priming lien rights under the Final DIP Order, Section 3.3.4(b) must be modified to provide for the delivery to Capital One of the entirety of the proceeds from the sale of the *Oslo Wave*, specifically $3.3 million, upon confirmation of the Plan. **Third**, Section 3.3.4(b) of the Plan must be modified to provide for the retention by Capital One of its lien over all property of the estate which constitutes DIP Collateral under the Final DIP Order even as such property becomes transferred into possession of the Reorganized Debtors until Capital One's Facility Claims are paid, in full. The revised Section 3.3.4(a-b) should read as follows:

> (a) *Classification*: Class 4 consists of the Capital One Facility Claims against LCI Shipholdings, Inc. (Class 4(o)) and against all of the Debtors pursuant to the Final DIP Order which shall be Allowed in the aggregate principal amount of $5,915l,591.48, minus the amount of repayment (if any) of principal prior to the Effective Date.
>
> (b) *Treatment:* Except to the extent that a holder of the Allowed Capital One Facility Claims agrees to a less favorable treatment, on entry of a Final Order confirming the Plan the holder of the Allowed Capital One Facility Claims shall

[13] *See* pages 25-27 of the Final DIP Order.

receive $3.3 million as a result of the disposition of the Collateral securing such Claims, or such portion thereof not previously delivered to the holder of the Allowed Capital One Facility Claims. The holder of the Allowed Capital One Facility Claims shall further retain its adequate protection lien over all property being vested into the Reorganized Debtors which constituted DIP Collateral under the Final DIP Order until the Capital One Facility Claims are paid in full or the holder of the Allowed Capital One Facility Claims agrees to a less favorable treatment.

C. As Currently Drafted, The Plan Does Not Treat Class 7(O) Claimants Fairly And Equitably

36. In these jointly administered cases, the Debtors have undertaken their reorganization on a "deconsolidated basis."[14] Furthermore, the Debtors have stated that their methodology included the "attribution of value" to each of the Debtors,[15] a phrase, which sounds similar to, but does not mean *determination of value*.

37. Based on the Debtors' attribution of values,[16] three Debtors (LCI, Gulf South Shipping PTE LTD, and Marco Shipping Company PTE, LTD) were solvent on the Petition Date[17] and, as result, the unsecured creditors of those Debtors are estimated to recover 100% of their claims.[18]

38. Yet, a review of the treatment of Class 7(o) claims in the Plan does not actually provide for the unsecured creditors of LCI to receive 100% of their claims.[19] Without more

[14] Disclosure Statement, page 15.
[15] *Id*.
[16] Plan page 24 and Disclosure Statement, pages 12-13.
[17] Although the Debtors never specifically disclose that these three entities were in fact solvent as of the filing of their Chapter 11 petitions, there is no other explanation for why their unsecured creditors should receive payment, in full, of their claims. Furthermore, the financial statements attached as Exhibit 2 to the Disclosure Statement (as evidence of the Debtors' Liquidation Analysis) contains a separate financial statement for LCI, which reflects the following totals for Net Book Value as of 7/31/2016: Total Assets - $128,356,000.50 against Total Secured Claims of $22,420,472.00 and Total Unsecured Claims of $21,591,177.00, or a net worth of $84,344,351.00.
[18] *Id*. Gulf South Shipping PTE LTD, and Marco Shipping Company PTE, LTD are subsidiaries of LCI.
[19] Disclosure Statement, Page 16, which states that holders of unsecured claims against LCI "will receive their pro rata share of $2.6 million of Cash, which Cash would otherwise be available for distribution to the holders of Claims in Class 7(o)." No explanation is given between this provision of the Disclosure Statement and the Plan's provisions which recite the cash amount as $2.55 million. See Section 1.1.80, the definition of "LCI GUC Distribution Pool" and the treatment provided for Class 7(o) in Section 3.3.7(b)(ii) of the Plan.

information regarding the total amount of cash that "would otherwise be available"[20] to LCI, and the amount of claims in the Class, the Debtors are unable to satisfy their burden of proving that any unsecured creditors of Class 7(o) will receive "property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date." 11 U.S.C. §1129(a)(7).

39. For instance, according to the financial statement provided with the Disclosure Statement, LCI owned assets (described as "Other"), which as of the Petition Date, had a "Projected Liquidation Value" of $104,443,534.50, but now are being assigned a Recovery Estimate of $0.[21] A better explanation of this line item is needed in order for the Debtors to be able to prove that LCI's unsecured creditors will fare as well under the Plan as they would in a Chapter 7 liquidation.

40. Admittedly, the information contained within the Disclosure Statement facially supports an *approximate* 100% recovery for the unsecured creditors of LCI, because they assert that Capital One will have a deficiency claim of $2,550,813.00[22] of the total claims of $2,605,565.47[23] in Class 7(o) to share in the distribution of $2,550,000.00.[24]

41. However, Capital One isn't the only significant creditor with a claim against LCI. Citizens Asset Finance, Inc. ("Citizens") also has a claim against LCI secured by a PCTC Vessel, the *Green Dale*. The Debtors obtained approval for the employment of a broker for the purpose of marketing the *Green Dale*.[25] Although the Disclosure Statement and Plan allow for the

[20] Disclosure Statement, Page 16.
[21] Exhibit 2 to the Disclosure Statement, [Doc 537, page 118 of 283].
[22] Disclosure Statement, page 11.
[23] Disclosure Statement, page 13.
[24] See Footnote 19, supra.
[25] *See* "Debtors' Application for Entry of an Order (I) Authorizing the Employment and Retention of (A) H Clarkson & Company Limited and (B) Jacq. Pierot Jr. & Sons Inc. as Brokers for the Debtors and Debtors in

marketing of the *Green Dale*, there is no contingency provided for the potential of a short-sale, where the marketing efforts do not produce payment in full of Citizens' claim. Instead, the Disclosure Statement simply provides that 100% of Citizens' claim is contemplated as being satisfied through the marketing or surrender of its collateral.

42. Pending the outcome of the Debtors' marketing efforts of the *Green Dale*, a deficiency claim for Citizens is certainly possible which could significantly affect the distribution to the other unsecured creditors of LCI and at a time when the impact cannot be remediated by the Plan which caps the class' recovery at $2.55 million.

43. Further complicating the picture is that the marketing period allowed under the brokerage agreement lasts until June 30, 2017. Consequently, the Debtors, and LCI in particular, are unable to prove that LCI's alleged unsecured creditors will receive on account of their claims more than they would receive were LCI to be liquidated within Chapter 7 as required by §1129(a)(7).

44. As a result of the prospect of less than a 100% recovery for LCI's unsecured creditors, the Plan cannot be considered "fair and equitable" in its treatment of those creditors. In order for the Plan to be "fair and equitable" to unsecured creditors, any junior class (which would be equitable interests in the debtor entity) should "not receive or retain under the plan on account of such junior claim or interest *any property*." §1129(b)(2)(B).

45. The Plan is imprecise on this point, providing in Section 3.3.11 that "Intercompany Interests shall be cancelled . . . unless all Claims against such entity have been satisfied in full, . . ." Consequently, because the Plan states that payment in full of LCI's

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Possession, (II) Waiving Certain Time-Keeping Requirements Pursuant to Local Rule 2016-1, and (III) Granting Related Relief [Doc. 522] approved by order of this Court [Doc. 567].

unsecured claims is contemplated (but not guaranteed), it is unclear whether, and under what specific circumstances, the equity interest owners of LCI will retain their interests in violation of the fair and equitable provisions of the Plan.

46. Finally, there is no specific statement in the Plan labeling Capital One's claims remaining after payment of the *Oslo Wave* sale proceeds as "allowed," or stating that Capital One holds an allowed claim in Class 7(o).

47. Failure to specify that Capital One's remaining claims are allowed claims theoretically subjects Capital One's remaining claims to an objection by the Reorganized Debtor and/or the GUC Trustee for up to 6 months under Section 6.2 of the Plan[26] in violation of the Final DIP Order which contains a specific Challenge Period deadline for objections to be filed to Capital One's claim (and the other AP Prepetition Secured Parties' claims) as defined in the Final DIP Order.

48. **PROPOSED REMEDY: First**, the Debtors must provide specific disclosure regarding the liquidation analysis of LCI and the recovery its unsecured creditors could anticipate in the event of a Chapter 7 liquidation of LCI. **Second**, the Debtors must provide specific information regarding the "Other" asset that is reflected in its Exhibit 2 with a "Projected Liquidation Value" of $104,443,534.50. **Third**, the Debtors must specifically provide that any Capital One claim is an allowed claim and not subject to subsequent objection.

[26] Under the Plan, Class 7(o) claimants do not participate in the GUC Trust, but Section 6.2 appears to give joint authority to the GUC Trustee and the Reorganized Debtors to object to unsecured claims. *See* 1.170, the definition of "*GUC Trust Interests.*" The treatment of Class 7(o) is provided in Section 3.3.7(b)(ii) of the Plan, which states that the holders will receive a pro rata share of the "LCI GUC Distribution Pool" which is defined as "$2.55 million of Cash" in Section 1.1.80.

CONCLUSION

49. Capital One expressly reserves all of its rights with respect to its claims and liens, including the right to assert and receive payment and protection of its claims and/or liens under the Final DIP Order.

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INTERNATIONAL SHIPHOLDING CORPORATION, *et al.*,[1]	:	Case No. 16-12220 (smb)
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	:	(Jointly Administered)
Debtors.	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2017, *Capital One, National Association's Objection And Reservation Of Rights With Respect To Confirmation Of First Amended Joint Chapter 11 Plan Of Reorganization For International Shipholding Corporation And Its Affiliated Debtors* was served on Debtors' counsel via email and filed electronically through the CM/ECF system, which caused all parties or counsel requesting notice to be served by electronic means on the date of filing.

By: */s/ Deborah A. Reperowitz*
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