

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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:
In re: : Chapter 11
:
GENCO SHIPPING & TRADING LIMITED, et al., : Case No. 14-11108 (SHL)
:
Debtors. : Jointly Administered
: Related Docket Nos. 12 & 37
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**FINAL ORDER (I) AUTHORIZING USE OF CASH COLLATERAL
PURSUANT TO 11 U.S.C. § 363, (II) GRANTING ADEQUATE
PROTECTION TO SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361,
362, AND 363, AND (III) GRANTING RELATED RELIEF**

Upon the motion of Genco Shipping & Trading Limited and its affiliated debtors,
as debtors-in-possession (collectively, the “Debtors”¹) in the above-captioned chapter 11 cases
(the “Chapter 11 Cases”), dated April 21, 2014 (the “Motion”),² for an interim order (the
“Interim Order”) and a final order (this “Final Order,” and together with the Interim Order, the

¹ The Debtors and, if applicable, the last four digits of their taxpayer identification numbers are as follows: Genco Shipping & Trading Limited (9758), Genco Investment LLC, Genco Management (USA) LLC (3865), Genco RE Investments LLC, Genco Ship Management LLC (7604), Genco Acheron Limited (9293), Genco Aquitaine Limited (8217), Genco Ardennes Limited (8215), Genco Augustus Limited (3622), Genco Auvergne Limited (8233), Genco Avra Limited (5557), Genco Bay Limited (5558), Genco Beauty Limited (9761), Genco Bourgogne Limited (8236), Genco Brittany Limited (8237), Genco Carrier Limited (9763), Genco Cavalier LLC (9764), Genco Challenger Limited (6074), Genco Champion Limited (6073), Genco Charger Limited (6072), Genco Claudius Limited (3620), Genco Commodus Limited (3619), Genco Constantine Limited (3617), Genco Explorer Limited (9764), Genco Hadrian Limited (3608), Genco Hunter Limited (6158), Genco Knight Limited (9773), Genco Languedoc Limited (8238), Genco Leader Limited (9774), Genco Loire Limited (8239), Genco London Limited (3610), Genco Lorraine Limited (8242), Genco Mare Limited (5641), Genco Marine Limited (9775), Genco Maximus Limited (3613), Genco Muse Limited (5276), Genco Normandy Limited (8243), Genco Ocean Limited (5645), Genco Picardy Limited (8244), Genco Pioneer Limited (9767), Genco Predator Limited (6075), Genco Progress Limited (9776), Genco Prosperity Limited (9777), Genco Provence Limited (8246), Genco Pyrenees Limited (8599), Genco Raptor LLC (9767), Genco Reliance Limited (9768), Genco Rhone Limited (8248), Genco Spirit Limited (5650), Genco Success Limited (9769), Genco Sugar Limited (9778), Genco Surprise Limited (9385), Genco Thunder LLC (9769), Genco Tiberius Limited (3614), Genco Titus Limited (3615), Genco Vigour Limited (9770), Genco Warrior Limited (6076), and Genco Wisdom Limited (9771). The Debtors’ business address is 299 Park Avenue, New York, NY 10171. Neither Baltic Trading Limited nor its subsidiaries are Debtors.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

“Cash Collateral Orders”) under sections 105, 361, 362, 363, 506(c), 507(b), and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”), and Rule 4001-2 of the Local Rules of the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”), and having sought, among other things, the following relief:

(a) authorization of the Debtors’ use of property constituting Cash Collateral (as defined below), subject to and pursuant to the terms and conditions set forth in this Final Order;

(b) the granting of adequate protection on account of the Debtors’ use of Cash Collateral and any diminution in value of the Prepetition Secured Parties’ (as defined below) respective interests in the Prepetition Collateral (as defined below), subject to and pursuant to the terms and conditions set forth in this Final Order, to:

i. the 2007 Facility Secured Parties (as defined below) under that certain Credit Agreement, dated as of July 20, 2007 (as amended, restated, supplemented, or otherwise modified, the “2007 Credit Agreement,” and collectively with all agreements, documents, notes, mortgages, security agreements, pledges, guarantees, subordination agreements, deeds, instruments, indemnities, indemnity letters, working fee letters, assignments, charges, amendments, and any other agreements delivered pursuant thereto or in connection therewith, including the “Credit Documents” as such term is defined in the 2007 Credit Agreement, the “2007 Facility Documents”) by and among Genco Shipping & Trading Limited (“GS&T”), as borrower, the various guarantor parties thereto, as guarantors (the “2007 Facility Guarantors,” and

collectively with GS&T, the “2007 Facility Obligors”), the mandated lead arranger and bookrunner parties thereto, the banks and financial institutions party thereto, as lenders (the “2007 Facility Lenders”), and Wilmington Trust, National Association, as successor administrative agent and successor collateral agent (in such capacities, the “2007 Facility Agent,” and collectively with the 2007 Facility Lenders and any other “Secured Creditors” (as defined in the 2007 Credit Agreement), the “2007 Facility Secured Parties”);

ii. the DB Term Loan Secured Parties (as defined below) under that certain \$253,000,000 Secured Loan Agreement, dated August 20, 2010 (as amended, restated, supplemented, or otherwise modified, the “DB Term Loan Agreement,” and collectively with all agreements, documents, notes, mortgages, security agreements, pledges, guarantees, subordination agreements, deeds, instruments, indemnities, indemnity letters, working fee letters, assignments, charges, amendments, and any other agreements delivered pursuant thereto or in connection therewith, the “DB Term Loan Documents”) by and among GS&T, as borrower, the mandated lead arranger and bookrunner parties thereto, the banks and financial institutions party thereto, as lenders and swap providers (respectively, the “DB Term Loan Lenders” and the “DB Term Loan Swap Providers”) and Deutsche Bank Luxembourg S.A., as agent and Deutsche Bank AG Filiale Deutschlandgeschäft, as security agent (together, and in such capacities, the “DB Term Loan Agents,” and collectively with the DB Term Loan Lenders and the DB Term Loan Swap Providers, the “DB Term Loan Secured Parties”) and the guarantees by certain parties named therein as

guarantors (the “DB Term Loan Guarantors,” and collectively with GS&T, the “DB Term Loan Obligors”); and

iii. the CA Term Loan Secured Parties (as defined below) under that certain Loan Agreement, dated as of August 12, 2010 (as amended, restated, supplemented, or otherwise modified, the “CA Term Loan Agreement,” and collectively with all agreements, documents, notes, mortgages, security agreements, pledges, guarantees, subordination agreements, deeds, instruments, indemnities, indemnity letters, working fee letters, assignments, charges, amendments, and any other agreements delivered pursuant thereto or in connection therewith, the “CA Term Loan Documents”) by and among GS&T, as borrower, the various subsidiary guarantor parties thereto, as guarantors (the “CA Term Loan Guarantors,” and collectively with GS&T, the “CA Term Loan Obligors”), the banks and financial institutions party thereto, as lenders (respectively, the “CA Term Loan Lenders”) and Credit Agricole Corporate and Investment Bank, as agent and security trustee (in such capacities, the “CA Term Loan Agent,” and collectively with the CA Term Loan Lenders, the “CA Term Loan Secured Parties”) (the 2007 Facility Secured Parties, the DB Term Loan Secured Parties, and the CA Term Loan Secured Parties, collectively, the “Prepetition Secured Parties”) (the CA Term Loan Agent, the DB Term Loan Agent, and the 2007 Facility Agent, the “Prepetition Agents”);

(c) approving certain stipulations by the Debtors as set forth in this Final Order with respect to the 2007 Facility Documents, the DB Term Loan Documents and the CA Term Loan Documents (each as defined below), and the liens and security interests arising therefrom;

(d) subject to entry of the Final Order and to the extent set forth herein and therein, waiving any right to surcharge the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code or other applicable law;

(e) modifying the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to permit the Debtors and the Secured Parties to implement the terms of the Cash Collateral Orders;

(f) scheduling a final hearing (the “Final Hearing”) on the Motion no later than the forty-fifth day following entry of the Interim Order to consider entry of this Final Order granting the relief requested in the Motion on a final basis; and

(g) waiving any applicable stay (including under Bankruptcy Rule 6004) and provision for immediate effectiveness of this Interim Order.

Upon due and sufficient notice of the Motion and the interim hearing on the Motion (the “Interim Hearing”) having been provided by the Debtors; and the Interim Hearing having been held on April 23, 2014 and the Interim Order having been entered [Docket No. 37]; and the Final Hearing having been held on May 14, 2014 and after considering all the pleadings filed with this Court; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. § 1408; and upon the record made by the Debtors at the Interim Hearing and the Final Hearing; and the Court having found and determined that the relief sought in the Motion is fair and reasonable and in the best interests of the Debtors, their estates and creditors, and is essential for the continued operation of the Debtors’ businesses; all objections, if any, to the entry of this Final Order having been withdrawn, resolved or overruled

by the Court; and after due deliberation and consideration and good and sufficient cause appearing therefor,

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. Petition Date. On April 21, 2014 (the “Petition Date”), each of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “Court”). On April 23, 2014, this Court entered an order approving the joint administration of the Chapter 11 Cases. The Debtors are continuing in the management and operation of their business and properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner or official committee of unsecured creditors has been appointed in these Chapter 11 Cases. An official committee of equity holders (together with any other statutory committee, the “Committees” and each, a “Committee”) was appointed on May 8, 2014.

B. Jurisdiction and Venue. This Court has jurisdiction over these proceedings pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Court may enter a final order consistent with Article III of the United States Constitution. Venue for the Chapter 11 Cases is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Debtors’ Stipulations. The Debtors admit, acknowledge, agree and stipulate to the following (collectively, the “Debtors’ Stipulations”), subject to the provisions of paragraph 7 of this Final Order:

1. Description of Prepetition Secured Obligations.

(a) *2007 Credit Facility Obligations.* Prior to the Petition Date, pursuant to the 2007 Credit Agreement and the other 2007 Facility Documents, the 2007

Facility Lenders made available to GS&T as borrower, a senior secured credit facility (the “2007 Facility”) in the principal amount of \$1,377,000,000. Each of the 2007 Facility Guarantors became party to a Guaranty (as defined in the 2007 Credit Agreement), pursuant to which it provided an unconditional joint and several guaranty of the 2007 Facility Obligations (as defined below) arising under the 2007 Facility Documents. As of the Petition Date, the 2007 Facility Obligors were truly and justly indebted to the 2007 Facility Secured Parties pursuant to the 2007 Facility Documents, without defense, counterclaim, offset, claim or cause of action of any kind, in the aggregate principal amount of not less than (i) \$1,055,911,525.00 outstanding under the 2007 Facility, plus (ii) accrued and unpaid interest with respect thereto, fees, costs and expenses (including any attorneys’, financial advisors’, and other professionals’ fees and expenses that are chargeable or reimbursable under 2007 Facility Documents), and all other “Obligations” (as defined in the 2007 Credit Agreement or any security document related thereto) under the 2007 Credit Facility Documents (collectively, the “2007 Facility Obligations”).³

(b) *DB Term Loan Obligations.* Prior to the Petition Date, pursuant to the DB Term Loan Agreement and the other DB Term Loan Documents, the DB Term Loan Lenders made available to GS&T as borrower, a term loan (the “DB Term Loan”) in the principal amount of \$253,000,000. Each of the DB

³ The 2007 Facility Secured Parties include the counterparties to an Interest Rate Protection Agreement (as such term is defined in the 2007 Credit Agreement), which may give rise to claims secured by the 2007 Facility Prepetition Collateral under (and in accordance with the priority scheme set forth in) the 2007 Facility Documents.

Term Loan Guarantors provided an unconditional guarantee of the DB Term Loan Obligations (as defined below) arising under the DB Term Loan Documents. As of the Petition Date, the DB Term Loan Obligors were truly and justly indebted to the DB Term Loan Secured Parties pursuant to the DB Term Loan Documents, without defense, counterclaim, offset, claim or cause of action of any kind, in the aggregate principal amount of not less than (i) \$175,718,000.00 outstanding under the DB Term Loan plus (ii) accrued and unpaid interest with respect thereto, fees, costs and expenses (including any attorneys', financial advisors', and other professionals' fees and expenses that are chargeable or reimbursable under the DB Term Loan Documents), and all other obligations under the DB Term Loan Documents (collectively, the "DB Term Loan Obligations").

(c) *CA Term Loan Obligations.* Prior to the Petition Date, pursuant to the CA Term Loan Agreement and the other CA Term Loan Documents, the CA Term Loan Lenders made available to GS&T as borrower, a term loan (the "CA Term Loan") in the principal amount of \$100,000,000. Each of the CA Term Loan Guarantors provided an unconditional joint and several guaranty of the CA Term Loan Obligations (as defined below) arising under the CA Term Loan Documents. As of the Petition Date, the CA Term Loan Obligors were truly and justly indebted to the CA Term Loan Secured Parties pursuant to the CA Term Loan Documents, without defense, counterclaim, offset, claim or cause of action of any kind, in the aggregate principal amount of not less than (i) \$73,561,132.60 outstanding under the

CA Term Loan plus (ii) accrued and unpaid interest with respect thereto, fees, costs and expenses (including any attorneys', financial advisors', and other professionals' fees and expenses that are chargeable or reimbursable under the CA Term Loan Documents), and all other obligations under the CA Term Loan Documents (collectively, the "CA Term Loan Obligations," and collectively with the 2007 Facility Obligations and the DB Term Loan Obligations, the "Prepetition Secured Obligations").

2. Validity of Prepetition Secured Obligations and Prepetition Loan Documents.

The Prepetition Secured Obligations, constitute legal, valid and binding obligations of the 2007 Facility Obligors, the DB Term Loan Obligors and the CA Term Loan Obligors, as applicable (collectively, the "Obligors"). No offsets, defenses, or counterclaims to, or claims or causes of action that could reduce the amount or ranking of, the Prepetition Secured Obligations exist. No portion of the Prepetition Secured Obligations is subject to set-off, avoidance, disallowance, recharacterization, reduction, subordination (whether equitable, contractual, or otherwise), counterclaims, recoupment, cross-claims, defenses or any other challenges under or pursuant to the Bankruptcy Code or any other applicable domestic or foreign law or regulation by any person or entity. The 2007 Facility Documents, the DB Term Loan Documents, and the CA Term Loan Documents (collectively, the "Prepetition Loan Documents") are valid and enforceable by each of the Prepetition Secured Parties, as applicable, for the benefit of the Prepetition Secured Parties against each of the applicable Obligors. The Prepetition Secured Obligations constitute allowed claims against the applicable Obligors' estates. As of the Petition Date, no claim of or cause of action held by the

Debtors or their estates exists against any of the Prepetition Secured Parties or their agents, in such capacities, whether arising under applicable state, federal, or foreign law (including, without limitation, any recharacterization, subordination, avoidance, or other claims arising under or pursuant to sections 105, 510, or 542 through 553 of the Bankruptcy Code), or whether arising under or in connection with any of the Prepetition Loan Documents (or the transactions contemplated thereunder), the Prepetition Secured Obligations, or the Prepetition Liens (as defined below).

3. Description of Prepetition Liens and Prepetition Collateral.

(a) Pursuant to and as more particularly described in the 2007 Facility Documents, the 2007 Facility Obligations are secured by, among other things, (i) first priority liens or mortgages on, security interests in, and assignments, charges, or pledges of (the “2007 Facility First Liens”), certain property, including, without limitation, certain cash collateral as defined in section 363 of the Bankruptcy Code (the “Cash Collateral”), vessels owned by the 2007 Facility Obligors, and other “Collateral” as such term is defined in the 2007 Credit Agreement (collectively, the “2007 Facility First Lien Collateral”) and (ii) second priority liens or mortgages on, security interests in, and charges or assignments of (the “2007 Facility Second Liens,” and collectively with the 2007 Facility First Priority Liens, the “2007 Facility Prepetition Liens”), certain vessels and insurances owned by the DB Term Loan Obligors and the CA Term Loan Obligors, respectively (collectively, the “2007 Facility Second Lien Collateral,” and together with the 2007 Facility First Lien Collateral, the “2007 Facility Prepetition Collateral”).

- (b) Pursuant to and as more particularly described in the DB Term Loan Documents, the DB Term Loan Obligations are secured by first priority liens or mortgages on, security interests in, and assignments, charges, or pledges of (the “DB Term Loan Prepetition Liens”), certain property described in the DB Term Loan Documents, including, without limitation, certain Cash Collateral, and vessels owned by the DB Term Loan Guarantors (collectively, the “DB Term Loan Prepetition Collateral”).
- (c) Pursuant to and as more particularly described in the CA Term Loan Documents, the CA Term Loan Obligations are secured by first priority liens or mortgages on, security interests in, and assignments, charges, or pledges of (the “CA Term Loan Prepetition Liens,” and collectively with the 2007 Facility Prepetition Liens and the DB Term Loan Prepetition Liens, the “Prepetition Liens”), certain property described in the CA Term Loan Documents, including, without limitation, certain Cash Collateral and vessels owned by the CA Term Loan Guarantors (collectively, the “CA Term Loan Prepetition Collateral,” and collectively with the 2007 Facility Prepetition Collateral and the CA Prepetition Collateral, the “Prepetition Collateral”).
- (d) The respective rights to, and priority of security interests with respect to any DB Term Loan Prepetition Collateral that also constitutes 2007 Facility Second Lien Collateral, among (i) the 2007 Facility Secured Parties, on the one hand, and (ii) the DB Term Loan Secured Parties, on the other, are set forth in the Deed of Coordination, dated as of August 1, 2012, among

GS&T, the collateral owners party thereto, Deutsche Bank AG Filiale Deutschlandgeschäft, in its capacity as the “First Mortgagee,” and the 2007 Facility Agent, in its capacity as the “Second Mortgagee” (as amended, modified, or otherwise supplemented, the “DB Term Loan Deed of Coordination”).

- (e) The respective rights to, and priority of security interests with respect to any CA Term Loan Prepetition Collateral that also constitutes 2007 Facility Second Lien Collateral among (i) the 2007 Facility Secured Parties, on the one hand, and (ii) the CA Term Loan Secured Parties, on the other, are set forth in the Deed of Coordination, dated as of August 1, 2012, among GS&T, the collateral owners party thereto, Credit Agricole Corporate and Investment Bank, in its capacity as the “First Mortgagee,” and the 2007 Facility Agent, in its capacity as the “Second Mortgagee” (as amended, modified, or otherwise supplemented, the “CA Term Loan Deed of Coordination,” and together with the DB Term Loan Deed of Coordination, the “Deeds of Coordination”).

4. Validity and Perfection of Prepetition Liens. The Prepetition Liens are (i) valid, binding, perfected and enforceable liens on and security interests in the applicable Prepetition Collateral; (ii) not subject to, pursuant to the Bankruptcy Code or other applicable law (foreign or domestic), avoidance, disallowance, reduction, recharacterization, recovery, subordination (whether equitable, contractual, or otherwise), attachment, offset, counterclaim, defense, “claim” (as defined in the Bankruptcy Code), impairment or any other challenge of any kind by any person or

entity; and (iii) subject and subordinate only to (a) the Carve-Out (as defined below) and (b) valid and enforceable liens and encumbrances in the Prepetition Collateral that were made expressly senior to the applicable Prepetition Secured Parties' liens under the applicable Prepetition Loan Documents, that are valid, perfected, enforceable and non-avoidable as of the Petition Date and that are not subject to avoidance, reduction, disallowance, disgorgement, counterclaim, surcharge, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law ("Permitted Liens"), and each Debtor irrevocably waives, for itself and its estate, any right to challenge or contest in any way the perfection, validation and enforceability of the Prepetition Liens or the validity or enforceability of the Prepetition Secured Obligations and the Prepetition Loan Documents. The Prepetition Liens were granted to the respective Prepetition Secured Parties for fair consideration and reasonably equivalent value, and were granted contemporaneously with the making of loans, commitments, and/or other financial accommodations under the Prepetition Loan Documents.

5. Releases by Debtors. Each of the Debtors and the Debtors' estates, on its own behalf and on behalf of its past, present and future predecessors, successors, heirs, subsidiaries, and assigns (collectively, the "Releasors") shall to the maximum extent permitted by applicable law, unconditionally, irrevocably and fully forever release, remise, acquit, relinquish, irrevocably waive and discharge each of the Prepetition Secured Parties, in such capacities, and each of their respective former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors in interest (collectively, the

“Releasees”) of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys’ fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description that exist on the date hereof relating to any of the Prepetition Loan Documents, or the transactions contemplated under such documents, including, without limitation, (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, perfection or avoidability of the liens or claims of the Prepetition Secured Parties. The Debtors’ acknowledgments, stipulations, waivers, and releases shall be binding on the Debtors and their respective representatives, successors and assigns and, subject to any action timely commenced before the Investigation Termination Date (as defined below), on each of the Debtors’ estates and all entities and persons, including any creditors of the Debtors, and each of their respective representatives, successors and assigns, including, without limitation, any trustee or other representative appointed in these Chapter 11 Cases, whether such trustee or representative is appointed under chapter 11 or chapter 7 of the Bankruptcy Code. For the avoidance of doubt, the foregoing release shall not act to release any independent, non-derivative claims of third parties against the Releasees.

6. Indemnification. The Prepetition Secured Parties have acted in good faith, and without negligence or violation of public policy or law, in respect of all actions taken by any of them in connection with or related in any way to negotiating, implementing, documenting or obtaining requisite approvals of the use of Cash Collateral, including in respect of the granting of the Adequate Protection Liens (as defined below), the use of Cash Collateral under this Final Order, and all documents related to and all transactions contemplated by the foregoing. Accordingly, the Prepetition Secured Parties shall be and hereby are indemnified and held harmless by the Debtors in respect of any claim or liability incurred in respect thereof or in any way related thereto; provided that no such party will be indemnified for any cost, expense or liability to the extent determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted primarily from such party's bad faith, gross negligence, or willful misconduct. No exception or defense in contract, law or equity exists as to any obligation set forth, as the case may be, in this paragraph C.6 or in the Prepetition Loan Documents to indemnify and/or hold harmless any Prepetition Agent or Prepetition Secured Party, as the case may be, and any such defenses are hereby waived; provided, that any fees and expenses incurred by or on behalf of the Prepetition Secured Parties pursuant to this paragraph shall be paid in accordance with paragraph 4(c) hereof.

D. Approved Budget. Attached as Exhibit A to the Interim Order was an initial 13-week cash flow forecast setting forth all projected cash receipts and cash disbursements on a weekly basis (as revised from time-to-time in accordance with paragraph 4.e of the Interim Order or this Final Order, as applicable, the "Approved Budget"). The Approved

Budget is an integral part of this Final Order and has been relied upon by the Prepetition Secured Parties in consenting to this Final Order and to permit the use of the Cash Collateral. The Debtors represent and warrant to the Prepetition Secured Parties and this Court that the Approved Budget includes and contains the Debtors' best estimate of all operational receipts and all operational disbursements, fees, costs, and other expenses that will be payable, incurred and/or accrued by any of the Debtors during the period covered by the Approved Budget and that such operational disbursements, fees, costs, and other expenses will be timely paid in the ordinary course of business pursuant to and in accordance with the Approved Budget unless such operational disbursements, fees, costs, and other expenses are not incurred or otherwise payable. The Debtors further represent that, to the best of their knowledge as of the date hereof, the Approved Budget is achievable and will allow the Debtors to operate in the Chapter 11 Cases and pay postpetition administrative expenses as they come due. The Debtors shall be required to update the Approved Budget and provide to the Prepetition Agents a Budget Variance Report (as defined below) in accordance with the provisions of paragraph 4.e of this Final Order.

E. Use of Cash Collateral. An immediate and critical need exists for the Debtors to use the Cash Collateral, consistent with the Approved Budget, for (i) working capital purposes; (ii) other general corporate purposes of the Debtors; and (iii) the satisfaction of the costs and expenses of administering the Chapter 11 Cases.

F. Consent by Prepetition Secured Parties. The Prepetition Agents have consented to, conditioned on the entry of this Final Order, the Debtors' proposed use of Cash Collateral, on the terms and conditions set forth in this Final Order, and such consent is binding on all Prepetition Secured Parties.

G. Adequate Protection. The adequate protection provided to the Prepetition Secured Parties, as set forth more fully in paragraph 4 of this Final Order, for the imposition of the automatic stay and any diminution in the value of the Prepetition Secured Parties' interest in the Prepetition Collateral from and after the Petition Date resulting from the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code, the use, sale, or lease of the Prepetition Collateral (including any Cash Collateral) under section 363 of the Bankruptcy Code is consistent with, and authorized by, the Bankruptcy Code and is offered by the Debtors to protect such parties' interests in the Prepetition Collateral in accordance with sections 361, 362, and 363 of the Bankruptcy Code. The adequate protection provided herein and other benefits and privileges contained herein are necessary in order to (i) protect the Prepetition Secured Parties from the diminution of their respective interests in the value of their Prepetition Collateral and (ii) obtain the foregoing consents and agreements.

H. Best Interest. This Court concludes that good cause has been shown and entry of this Final Order is in the best interests of the Debtors' respective estates and creditors as its implementation will, among other things, allow for the continued operation of the Debtors' existing businesses and enhance the Debtors' prospects for a successful reorganization.

I. No Liability to Third Parties. The Debtors stipulate and the Court finds that none of the Prepetition Secured Parties shall (i) have liability to any third party or be deemed to be in control of the operation of any of the Debtors or to be acting as a "controlling person," "responsible person," "owner or operator," or "participant" with respect to the operation or management of any of the Debtors (as such term, or any similar terms, are used

in the Internal Revenue Code, the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any other Federal, state, or applicable international statute or regulation) or (ii) owe any fiduciary duty to any of the Debtors, their creditors or estates, or shall constitute or be deemed to constitute a joint venture or partnership with any of the Debtors.

J. Section 552(b). Each of the Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code. The Debtors waive any right to seek to apply the “equities of the case” exception under section 552(b) of the Bankruptcy Code to the Prepetition Secured Parties with respect to proceeds, products, offspring, or profits with respect to any of the Prepetition Collateral (including any charter-hire receipts, earnings, insurance proceeds, or similar payments received by an applicable Obligor after the Petition Date).

K. Notice. The Final Hearing was held pursuant to the authorization of Bankruptcy Rule 4001 and S.D.N.Y. Local Bankruptcy Rule 4001-2. Notice of the Final Hearing and the Interim Order have been provided to (a) the Office of the United States Trustee for the Southern District of New York; (b) the Debtors’ material prepetition secured lenders or any agent therefor; (c) counsel to the Debtors’ material prepetition secured lenders; (d) Akin Gump Strauss Hauer & Feld, LLP, as counsel to certain holders of the Debtors’ 5.00% Convertible Senior Notes due August 15, 2015 (such holders, the “Supporting Noteholders”); (e) the indenture trustee for the Debtors’ convertible notes; (f) the holders of the 30 largest unsecured claims against the Debtors on a consolidated basis; (g) the Internal Revenue Service; (h) the United States Attorney for the Southern District of New York; (i) the U.S. Securities and Exchange Commission; and (j) any such other party on

the Special Service List (as defined in the Administrative Order Establishing Case Management Procedures [Docket No. 136]). Under the circumstances, such notice of the Motion, the relief requested therein and the Interim Hearing complies with Bankruptcy Rules 4001(b), (c), and (d), and the Local Rules.

Based upon the foregoing, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Approval of Final Order. The Motion is approved on the terms and conditions set forth in this Final Order. Any objections that have not previously been withdrawn are hereby overruled. This Final Order shall become effective immediately upon its entry.

2. Authorization to Use Cash Collateral. Pursuant to this Final Order, the Debtors are authorized on an final basis to use Cash Collateral for: (i) working capital purposes; (ii) other general corporate purposes of the Debtors; and (iii) the satisfaction of the costs and expenses of administering the Chapter 11 Cases in accordance with the Approved Budget (subject to the Permitted Variances (as defined below)) through and including the Termination Date (as defined below) (the “Cash Collateral Period”).

3. Termination Events. Notwithstanding anything contained herein, the authority for use of Cash Collateral under this Final Order shall terminate (the “Termination Date”) upon the earlier to occur of (each of the following, a “Termination Event”): (i) five (5) days after notice of the date upon which any Event of Default (as defined below) occurs and is continuing; (ii) the date this Final Order ceases to be in full force and effect for any reason; (iii) the date the Court enters an order dismissing any of the Chapter 11 Cases; (iv) the date the Court enters an order converting any of the Chapter 11 Cases to a case under chapter 7 of the

Bankruptcy Code; and (v) the date that any Debtor shall file a motion seeking any modification or extension of this Final Order without the prior written consent of each of the Prepetition Agents.

4. Prepetition Secured Parties' Adequate Protection. The Prepetition Secured Parties are entitled pursuant to sections 361 and 363(c) of the Bankruptcy Code to adequate protection of their interests in the Prepetition Collateral (including Cash Collateral) for any diminution in the value of the Prepetition Secured Parties' interest in the Prepetition Collateral from and after the Petition Date in any way, including resulting from the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code, or the use, sale, or lease of the Prepetition Collateral (including Cash Collateral) under section 363 of the Bankruptcy Code. The Prepetition Agents, as applicable and on behalf of themselves and for the benefit of the respective Prepetition Secured Parties, were under the Interim Order and are hereby granted, to the extent of any diminution in value of their interests in the Prepetition Collateral from and after the Petition Date, the following:

a. Adequate Protection Liens. To the extent set forth below, valid, binding, enforceable and perfected security interests in and liens upon (the "Adequate Protection Liens") all property, whether now owned or hereafter acquired or existing and wherever located, of each Debtor and each Debtor's "estate" (as created pursuant to section 541(a) of the Bankruptcy Code), property of any kind or nature whatsoever, real or personal, tangible or intangible, and now existing or hereafter acquired or created, including, without limitation, all cash, accounts, inventory, goods, contract rights, instruments, documents, chattel paper, patents, trademarks, copyrights, and licenses therefor, accounts receivable, receivables and receivables records, general intangibles, payment intangibles, tax or other refunds, insurance proceeds, letters of

credit, contracts, owned real estate, real property leaseholds, vessels, charter-hire receipts, earnings, insurance policies and proceeds, fixtures, deposit accounts, commercial tort claims, securities accounts, instruments, investment property, letter-of-credit rights, supporting obligations, machinery and equipment, real property, leases (and proceeds from the disposition thereof), all of the issued and outstanding capital stock of each Debtor, other equity or ownership interests, including equity interests in subsidiaries and non-wholly-owned subsidiaries, money, investment property, and causes of action (other than causes of action arising under sections 502(d), 544, 545, 547, 548, 550 (unless related to an action under 549), 551 (unless related to an action under 549), or 553 of the Bankruptcy Code (the “Avoidance Actions”)), the proceeds of Avoidance Actions, Cash Collateral, and all cash and non-cash proceeds, rents, products, substitutions, accessions, and profits of any of the collateral described above, documents, vehicles, intellectual property, securities, partnership or membership interests in limited liability companies and capital stock, including, without limitation, the products, proceeds and supporting obligations thereof, whether in existence on the Petition Date or thereafter created, acquired, or arising and wherever located (all such property, other than the Prepetition Collateral in existence immediately prior to the Petition Date and proceeds, rents, products, profits, and offspring of such Prepetition Collateral, being collectively referred to as, the “Postpetition Collateral” and collectively with the Prepetition Collateral, the “Collateral”) without the necessity of the execution of mortgages, security agreements, pledge agreements, financing statements, or other agreements;

- i. With respect to Collateral of GS&T, Genco Investments LLC, Genco Ship Management LLC, Genco Management (USA) Ltd., and Genco RE Investments LLC (collectively, the “Non-Silo Debtors”), the Adequate Protection Liens shall be granted

to all Prepetition Secured Parties on a *pari passu* basis and shall be senior liens, subject only to (A) the Carve-Out (as defined below), (B) Permitted Liens, and (C) Prepetition Liens; provided that the Adequate Protection Liens granted to those Prepetition Secured Parties with Prepetition Liens on the Prepetition Collateral of the Non-Silo Debtors shall be senior to the Adequate Protection Liens granted to the Prepetition Secured Parties who do not hold Prepetition Liens on Prepetition Collateral of the Non-Silo Debtors;

ii. With respect to Collateral of the 2007 Facility Guarantors, the Adequate Protection Liens shall be granted only to the 2007 Facility Secured Parties and shall be senior liens, subject only to (A) the Carve-Out, (B) Permitted Liens, and (C) Prepetition Liens;

iii. With respect to Collateral of the DB Term Loan Guarantors, the Adequate Protection Liens shall be granted only to the DB Term Loan Secured Parties and the 2007 Facility Secured Parties and shall be senior liens, subject only to (A) the Carve-Out, (B) Permitted Liens, and (C) Prepetition Liens; provided that the Adequate Protection Liens granted to the DB Term Loan Secured Parties with respect to the DB Term Loan Guarantors shall be senior to the Adequate Protection Liens granted to the 2007 Facility Secured Parties;

iv. With respect to Collateral of the CA Term Loan Guarantors, the Adequate Protection Liens shall be granted only to the CA Term Loan Secured Parties and the 2007 Facility Secured Parties and shall be senior liens, subject only to (A) the Carve-Out, (B) Permitted Liens, (C) Prepetition Liens; provided that the Adequate Protection Liens granted to the CA Term Loan Secured Parties with respect to the CA

Term Loan Guarantors shall be senior to the Adequate Protection Liens granted to the 2007 Facility Secured Parties; and

v. the Adequate Protection Liens shall include any lien, and attach to any collateral associated therewith, that is avoided for the benefit of the estate pursuant to section 551 of the Bankruptcy Code;

b. Superpriority Claims. To the extent set forth below, allowed superpriority administrative expense claims pursuant to sections 503(b), 507(a) and 507(b) of the Bankruptcy Code as provided for in section 507(b) of the Bankruptcy Code (the “Superpriority Claim”). Any Superpriority Claims shall be subject to the Carve-Out, and shall be allowed claims against the applicable Debtors (jointly and severally) with priority over any and all administrative expenses and all other claims against such Debtors now existing or hereafter arising, of any kind whatsoever, including, without limitation, all other administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all other administrative expenses or other claims arising under any other provision of the Bankruptcy Code, including, without limitation, sections 105, 326, 327, 328, 330, 331, 503(b), 507(a), 507(b), or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy or attachment. The Superpriority Claims shall be payable from and have recourse to the proceeds of the Avoidance Actions. The allowed Superpriority Claims shall be payable from and have recourse to all unencumbered pre- and post-petition property of the applicable Debtors (subject to the foregoing sentence). Other than the Carve-Out, no cost or expense of administration under sections 105, 503 or 507 of the Bankruptcy Code or otherwise, including any such cost or expense resulting from or arising after the conversion of the any of the Chapter 11 Cases

under section 1112 of the Bankruptcy Code, shall be senior to, or *pari passu* with, the Superpriority Claims;

i. With respect to the 2007 Facility Guarantors and their estates, the Superpriority Claims shall be granted only to the 2007 Facility Secured Parties;

ii. With respect to the DB Term Loan Guarantors and their estates, the Superpriority Claims shall be granted only to the DB Term Loan Secured Parties and the 2007 Facility Secured Parties; provided that such Superpriority Claims granted to the DB Term Loan Secured Parties shall be senior to those granted to the 2007 Facility Secured Parties;

iii. With respect to the CA Term Loan Guarantors, the Superpriority Claims shall be granted only to the CA Term Loan Secured Parties and the 2007 Facility Secured Parties; provided that such Superpriority Claims granted to the CA Term Loan Secured Parties respect to the CA Term Loan Guarantors shall be senior to those granted to the 2007 Facility Secured Parties; and

iv. With respect to the Non-Silo Debtors, the Superpriority Claims shall be granted all Prepetition Secured Parties on a *pari passu* basis;

c. Fees and Expenses. Fourteen (14) days following receipt by the Debtors, the Committee, and the United States Trustee of invoices therefor, payment, without further order of, or application to, the Bankruptcy Court or notice to any other party, of all outstanding prepetition and all postpetition reasonable and documented fees and expenses incurred by the Prepetition Agents, including, without limitation,⁴

⁴ To the extent any party has an objection to the fees and expenses requested, they shall so advise applicable Prepetition Agent(s). If any such objection is raised and not resolved and/or withdrawn, the parties shall submit any dispute to this Court for adjudication

i. the fees and expenses incurred by (a) Milbank Tweed, Hadley & McCloy LLP (“Milbank”), as counsel to the 2007 Facility Agent, including payment of fees and expenses of Milbank in accordance with the terms set forth in the fee letter dated as of January 7, 2014, (b) Seward & Kissel LLP (“Seward”), as maritime and local counsel to the 2007 Facility Agent, including payment of fees and expenses of Seward in accordance with the terms set forth in the fee letter dated as of February 7, 2013, (c) Houlihan Lokey Capital, Inc., (“Houlihan”) as financial advisors to the 2007 Facility Agent, under the engagement letter dated as of January 7, 2013 (including, without limitation, the “Deferred Fee” in accordance with the terms described therein), and (d) any local, maritime, or foreign counsel retained by the 2007 Facility Agent whose services are discrete and not duplicative of the services of any other counsel of the 2007 Facility Agent; and

ii. the fees and expenses incurred under the DB Term Loan Documents or CA Term Loan Documents, including, without limitation, by (a) Paul, Weiss, Rifkind, Wharton & Garrison LLP as counsel to the CA Term Loan Agent and the DB Term Loan Agent, (b) Orrick, Herrington & Sutcliffe LLP, as English counsel to the CA Term Loan Agent, (c) Stephenson Harwood, LLP, as English counsel to the DB Term Loan Agents, (d) Poles, Tublin, Stratakis & Gonzalez, LLP, as Marshall Islands counsel to the DB Term Loan Agents, and (e) such other maritime or foreign legal advisors that may be retained pursuant to the letter dated as of February 19, 2014 between the CA Term Loan Agent and GS&T and the letter dated as of February 12, 2014 between the DB Term Loan Agents and GS&T, respectively.

d. Interest. The Prepetition Agents (on behalf of the Prepetition Secured Parties) shall receive from the Debtors, to the extent not already paid pursuant to the Interim Order (x) on the first date after the date of entry of the Interim Order on which payment would be due, in the absence of any default, under the applicable Loan Documents, cash payment of all accrued and unpaid interest on the Prepetition Secured Obligations at the non-default rates provided for in the applicable Prepetition Loan Documents and (y) thereafter, monthly in arrears, payment in cash of all interest and letter of credit, unused commitment and other fees that had accrued on and after the date of the initial payment provided for in (x) above, as applicable, at the non-default rate provided for under the applicable Prepetition Loan Documents; provided that default interest and compounded interest shall accrue on the Prepetition Secured Obligations to the extent permitted under applicable law, subject to the right of parties-in-interest to object to the allowance of such amounts.

e. Reporting and Budget Compliance. Every two weeks, on the third day of such week, the Debtors shall deliver to the advisors to the Prepetition Agents an updated budget for the prospective 13 week period beginning the week following delivery of such updated budget, with the first such updated budget having been delivered on May 7, 2014. The Prepetition Agents shall have until three business days from receipt of such updated budget to reasonably object to such budget. If no Prepetition Agent reasonably objects during such time, such budget shall become the Approved Budget for purposes of this Final Order. Pending resolution of any objection, the Approved Budget for purposes of this Final Order shall remain the Approved Budget (including any previously updated Approved Budget). Every two weeks, on the third business day of such week, the Debtors shall deliver to the advisors to the Prepetition Agents and the Supporting Noteholders, a variance report from the previous four week period

comparing the actual cash receipts and disbursements of the Debtors with the receipts and disbursements in the Approved Budget (the “Budget Variance Report”) with respect to the following line items in the Approved Budget (i) interest expenses over the prior four week period (“Interest Expense”), (ii) general and administrative expenses over the prior four week period (“G&A”), (iii) vessel operating expenses over the prior four week period, with pro forma treatment of costs reasonably expected to be reimbursed by insurance (the “Vessel Operating Expenses”), and (iv) total cash balance, subject to credits for any difference between projected and actual drydock expenses and restructuring costs and the pro forma treatment of costs reasonably expected to be reimbursed by insurance (the “Cash Balance”). The Debtors shall ensure that at no time shall the Budget Variance Report show (w) an unfavorable variance of more than 15% for any Interest Expense or G&A, (x) an unfavorable variance of the greater of \$1 million or 15% for actual Vessel Operating Expenses, (y) a Cash Balance less than \$22.5 million, or (z) an unfavorable variance of more than \$7 million with respect to the Cash Balance ((w)-(z), collectively, the “Permitted Variance”). The first Budget Variance Report shall be provided on May 21, 2014. The Debtors shall also provide the Prepetition Agents with (a) the monthly financial reporting given to the U.S. Trustee, (b) financial reporting required under (and consistent with the requirements contained in) the Prepetition Loan Documents, and (c) a bi-weekly charter report.

f. Access to Records and Collateral. In addition to, and without limiting, whatever rights to access the Prepetition Secured Parties have under their respective Prepetition Loan Documents, upon reasonable notice, at reasonable times during normal business hours, the Debtors shall permit representatives, agents, and employees of the Prepetition Secured Parties (i) to have access to the Debtors’ properties and other Collateral of any Debtor against whom

they are granted Adequate Protection Liens or Superpriority Claims under this Final Order for the purposes of inspection, (ii) to examine the Debtors' books and records, and (iii) to discuss the Debtors' affairs, finances, and condition with the Debtors' officers and financial advisors.

g. Right to Seek Additional Adequate Protection. This Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Prepetition Secured Parties to request additional forms of adequate protection at any time or the rights of the Debtors or any other party to contest such request.

5. Events of Default. The occurrence of any of the following events shall constitute an event of default (collectively, the "Events of Default"):

a. the termination of the prepetition restructuring support agreement entered into by the Debtors and certain consenting creditors dated on or about April 1, 2014 (the "Restructuring Support Agreement") by the Debtors (other than a termination pursuant to section 11(b)(i) of the Restructuring Support Agreement), the Required Supporting 2007 Facility Lenders (as defined in the Restructuring Support Agreement) (other than a termination pursuant to section 11(d) of the Restructuring Support Agreement), the Required Supporting \$253 Million Facility Lenders (as defined in the Restructuring Support Agreement), or the required \$100 Million Facility Lenders (as defined in the Restructuring Support Agreement);

b. any Debtor shall have asserted, in a pleading filed with the Court (or another court of competent jurisdiction), a claim or challenge against any of the Prepetition Secured Parties contrary to the Debtors' acknowledgements, stipulations and releases contained herein;

c. the Court shall have entered an order appointing a chapter 11 trustee, responsible officer, or any examiner with enlarged powers relating to the operation of the businesses in the Chapter 11 Cases, unless consented to in writing by the Prepetition Agents;

d. the Court shall have entered an order, which order is not subject to a stay of its effectiveness pending appeal, granting relief from the automatic stay to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any Collateral which has an aggregate value in excess of \$5,000,000;

e. the Court shall have entered an order granting relief from the automatic stay to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any Collateral which has an aggregate value in excess of \$20,000,000;

f. the Court shall have entered an order (i) reversing, amending, supplementing, vacating, or otherwise modifying this Final Order without the consent of the Prepetition Agents or (ii) avoiding or requiring repayment of any portion of the payments made pursuant to the terms hereof;

g. five days after notice provided by, as applicable, a Prepetition Agent that the Debtors have failed to make any payment when due under section 4 of this Final Order and the outstanding payment is not made within such five days;

h. the date on which the Debtors produce a Budget Variance Report that shows that they have failed to comply with the Approved Budget (including any Permitted Variance);

i. the Debtors shall have failed to comply with any other term hereof and the same is not remedied within five (5) business days' notice of such non-compliance by any of the Prepetition Agents;

j. any relevant Debtor materially breaches any covenant or undertaking, after any applicable cure period, relating to the insurance, operation and maintenance of the vessels (including, without limitation, the terms regarding the expropriation, arrest, detention, capture,

condemnation, confiscation, requisition, purchase, seizure or forfeiture of, or any taking of title to, the applicable vessels) as specified in the 2007 Facility Documents, the DB Term Loan Documents, or the CA Term Loan Documents;

k. the Debtors shall have filed a motion seeking to create any postpetition liens or security interests other than those granted or permitted pursuant hereto; or

l. the Debtors lose the exclusive right to file and solicit acceptances of a plan of reorganization.

6. Rights and Remedies Upon Event of Default or Termination Event. Upon occurrence of an Event of Default and following the giving of five (5) days' notice to the Debtors, the United States Trustee, the Supporting Noteholders, and the Committee (the "Notice Period") or otherwise immediately upon a Termination Event (other than the Termination Event specified in paragraph 3(ii)), the Prepetition Secured Parties may revoke the Debtors' right, if any, to use Cash Collateral. Upon occurrence of a Termination Event or an Event of Default and following the giving of seven (7) days' notice (or such shorter notice period as the Court may order due to the exigencies of the situation) to the Debtors, the United States Trustee, the Supporting Noteholders, and the Committee (the "Extended Notice Period"), unless the Court orders otherwise during the Extended Notice Period, the automatic stay pursuant to section 362 of the Bankruptcy Code shall be automatically terminated without further notice or order of the Court, and the Prepetition Secured Parties shall be permitted to exercise all rights and remedies set forth in this Final Order, and the Prepetition Loan Documents, including without limitation, collecting and applying any proceeds of the Prepetition Collateral in accordance with the terms of this Final Order and the Prepetition Loan Documents, and as otherwise available at law without further order or application or motion to the Court, and without restriction or restraint by

any stay under section 362 or 105 of the Bankruptcy Code. Notwithstanding anything herein to the contrary, the automatic stay pursuant to section 362 of the Bankruptcy Code shall, as of the date hereof, be automatically modified and terminated for the purposes of giving any notice contemplated hereunder, under any of the Prepetition Loan Documents, or under the Restructuring Support Agreement by any party thereto.

7. Effect of Stipulations on Third Parties. The stipulations and admissions contained in this Final Order, including, without limitation, in paragraph C of this Final Order, shall be binding upon the Debtors and their affiliates and any of their respective successors (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for any Debtor) in all circumstances. The stipulations, releases, waivers, and admissions contained in this Final Order, including, without limitation, in paragraph C of this Final Order, shall be binding upon all other parties in interest, including, without limitation, any Committee and any other person or entity acting (or purporting to act) on behalf of the Debtors' estate, unless and except to the extent that, (i) upon three (3) days' prior written notice to the Debtors and the Prepetition Agents, a party in interest with proper standing granted by order of the Court (or another court of competent jurisdiction) has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in paragraph 10) by no later than (x) the earlier of the date that is 60 days from the entry of this Final Order or the date on which the effective date of the Plan (as defined in the Restructuring Support Agreement) occurs or (y) such later date as has been agreed to, in writing, by the applicable Prepetition Agent, in its sole discretion (the "Investigation Termination Date"), (A) challenging the validity, enforceability, priority or extent of the Prepetition Obligations or (B) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance

power claims or any other claims, counterclaims or causes of action, objections, contests or defenses to the extent released by the Debtors under paragraph C of this Final Order (collectively, “Claims and Defenses”) against any of the Prepetition Secured Parties or their affiliates, representatives, attorneys or advisors in connection with matters related to the Prepetition Loan Documents or the Prepetition Collateral, and (ii) such challenge or claim in any such timely filed adversary proceeding or contested matter has (A) with respect to the plaintiff, not been dismissed or overruled, (B) with respect to other parties-in-interest, been sustained in a final order, and (C) not been released, waived, or settled through separate order of the Court, including an order confirming the Plan, which has become effective; provided that any challenge or claim shall set forth with specificity the basis for such challenge or claim and any challenges or claims not so specified prior to the expiration of the Investigation Termination Date shall be forever deemed waived, released and barred. If no such adversary proceeding or contested matter is timely filed, (x) the Prepetition Obligations shall constitute allowed claims, not subject to counterclaim, setoff, recoupment, reduction, subordination, recharacterization, defense or avoidance, for all purposes in the Chapter 11 Cases and any subsequent chapter 7 case, (y) the liens and security interests securing the Prepetition Obligations shall be deemed to have been, as of the Petition Date, legal, valid, binding and perfected, not subject to recharacterization, subordination or avoidance, and (z) the Prepetition Obligations, the liens and security interests securing the Prepetition Obligations, and the Prepetition Secured Parties shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of any Debtor’s estate, including, without limitation any successor thereto (including, without limitation, any chapter 7 or 11 trustee appointed or elected for the Debtor). If any such adversary proceeding or contested matter is timely filed, the stipulations and admissions contained in

paragraph C of this Final Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any Committee and on any other person or entity, except to the extent that such findings and admissions were expressly challenged in such adversary proceeding or contested matter prior to the Investigation Termination Date. Nothing in this Final Order vests or confers on any “person” (as defined in the Bankruptcy Code), including any Committee, standing or authority to bring, pursue, or settle any cause of action belonging to the Debtors or their estates, including, without limitation, Claims and Defenses with respect to the Prepetition Loan Documents or the Prepetition Secured Obligations, and an order of the Court conferring such standing on the Committee or other party-in-interest shall be a prerequisite for the prosecution of Claims and Defenses by the Committee or such other party-in-interest.

8. Carve-Out. The liens, security interests, and superpriority claims granted herein (including the Adequate Protection Lien and any Superpriority Claims), the Prepetition Liens, and any other liens, claims, or interest of any person, shall be subject and subordinate to the Carve-Out. “Carve-Out” shall mean, upon the Termination Date, the sum of (i) all fees required to be paid to the clerk of the Bankruptcy Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) fees and expenses of up to \$75,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order or otherwise, all unpaid fees, costs and expenses (the “Professional Fees”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code or any statutory committee appointed in these Chapter 11 Cases pursuant to

section 1102 of the Bankruptcy Code (collectively, the “Professional Persons”), before or on the date of delivery by a Prepetition Agent of a Carve-Out Trigger Notice (as defined below), whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice (the “Pre-Trigger Date Fees”); and (iv) after the date of delivery of the Carve-Out Trigger Notice (the “Trigger Date”), to the extent incurred after the Trigger Date, the payment of Professional Fees of Professional Persons in an aggregate amount not to exceed \$2,500,000 (the amount set forth in this clause (iv) being the “Post Carve-Out Trigger Notice Cap”). For purposes of the foregoing, “Carve-Out Trigger Notice” shall mean notice by the Prepetition Agents to the Debtors, its lead counsel, the United States Trustee, lead counsel to the Supporting Noteholders, and lead counsel for any Committee, delivered upon the occurrence of a Termination Date under the Final Order, stating that the Post Carve-Out Trigger Notice Cap has been invoked.

9. No proceeds of the Prepetition Collateral or the Carve-Out shall be used for the purpose of: (a) investigating, objecting to, challenging or contesting in any manner, or in raising any defenses to, the amount, validity, extent, perfection, priority or enforceability of the Prepetition Secured Obligations, or any liens or security interests with respect thereto, or any other rights or interests of any of the Prepetition Secured Parties, whether in their capacity as such or otherwise, including with respect to the Adequate Protection Liens, or in asserting any claims or causes of action against any of the Prepetition Secured Parties (whether in their capacity as such or otherwise), including, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; or (b) paying any amount on account of any claims arising before the Petition Date unless such payments are approved by an order of this Court; provided that up

to \$75,000 of Cash Collateral shall be made available to the Committee for fees and expenses incurred in connection with any Lien Investigation (the “Committee Investigation Budget”). The Prepetition Secured Parties reserve the right to object to, contest, or otherwise challenge any claim for amounts incurred in connection with such activities (including amounts incurred in connection with a Lien Investigation in excess of the Committee Investigation Budget) on the grounds that such claim shall not be allowed, treated or payable as an administrative expense claim for purposes of section 1129(a)(9)(A) of the Bankruptcy Code.

10. No Waiver of Prepetition Secured Parties’ Rights; Reservation of Rights.

Notwithstanding any provision in this Final Order to the contrary, this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, any of the Prepetition Secured Parties’ rights with respect to any person or entity other than the Debtors or with respect to any other collateral owned or held by any person or entity other than the Debtors. The rights of the Prepetition Secured Parties are expressly reserved and entry of this Final Order shall be without prejudice to, and does not constitute a waiver, expressly or implicitly, of:

- a. the Prepetition Secured Parties’ rights under any of the Prepetition Loan Documents;
- b. the Prepetition Secured Parties’ rights to seek any other or supplemental relief in respect of the Debtors;
- c. the Prepetition Secured Parties’ rights to seek modification of the grant of adequate protection provided under this Final Order so as to provide different or additional adequate protection at any time;
- d. any of the Prepetition Secured Parties’ rights under the Bankruptcy Code or under non-bankruptcy law including, without limitation, to the right to: (i) request modification of the automatic stay of section 362 of the Bankruptcy Code; (ii) request dismissal of the Chapter

11 Cases, conversion of any of the Chapter 11 Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with extended powers; or (iii) propose, subject to section 1121 of the Bankruptcy Code, a chapter 11 plan or plans;

e. any of the Prepetition Secured Parties' unqualified right to credit bid up to the full amount of any remaining Prepetition Obligations in the sale of any Prepetition Collateral or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code; or

f. any other rights, claims, or privileges (whether legal, equitable, or otherwise) of the Prepetition Secured Parties.

11. Recharacterization. Notwithstanding anything to the contrary herein, if any of the Prepetition Secured Obligations are determined by this Court to be undersecured, the payment of fees and expenses and interest permitted hereunder may be recharacterized and re-credited to the principal balance of such Prepetition Secured Obligations pursuant to further order entered by this Court.

12. Further Relief. Notwithstanding anything to the contrary herein, nothing herein shall limit (i) the Debtors' right to seek authority on a consensual or non-consensual basis, whether before or after a Termination Event or an Event of Default, to use Cash Collateral pursuant to further order of the Bankruptcy Court or (ii) the Prepetition Secured Parties' rights to object to, challenge, or oppose any such relief or to declare an Event of Default or a Termination Event hereunder.

13. Further Assurances. The Debtors shall execute and deliver to the Prepetition Agents all such agreements, financing statements, instruments, and other documents

as they may reasonably request to evidence, confirm, validate, or evidence the perfection of the Adequate Protection Liens granted pursuant hereto.

14. 506(c) Waiver. Except as provided in this Final Order, no costs or expenses of administration which have been or may be incurred in any of the Chapter 11 Cases at any time shall be charged against any Prepetition Secured Party, any of the Prepetition Secured Obligations, any of their respective claims, or the Collateral pursuant to sections 506(c) or 105(a) of the Bankruptcy Code, or otherwise, without the prior written consent of the affected Prepetition Agent, and no such consent shall be implied from any other action, inaction, or acquiescence by any of the Prepetition Secured Parties or their respective representatives.

15. Restrictions on Granting Postpetition Claims and Liens. Except with respect to the Carve-Out, no claim or lien that is *pari passu* with or senior to the claims and liens of any of the Prepetition Secured Parties shall be offered by any Debtor, or granted, to any other person, except in connection with any financing used to pay in full the claims of the Prepetition Secured Parties or that would constitute a Permitted Lien with respect to the Debtor against whom such lien is granted.

16. Automatic Effectiveness of Liens. The Adequate Protection Liens shall not be subject to challenge and shall attach and become valid, perfected, enforceable, non-avoidable, and effective by operation of law as of the Petition Date, having the priority set forth in paragraph 4 of this Final Order, without any further action by the Debtors or the Prepetition Secured Parties and without the necessity of execution by the Debtors, or the filing or recordation, of any financing statements, security agreements, vehicle lien applications, mortgages (including ships' mortgages), filings with the U.S. Patent and Trademark Office, the U.S. Copyright Office, or the Library of Congress, or other documents or the taking of any other

actions. If any Prepetition Agent hereafter requests that the Debtors execute and deliver to them financing statements, security agreements, collateral assignments, mortgages, or other instruments and documents considered by such agent to be reasonably necessary or desirable to further evidence the perfection of the Adequate Protection Liens, as applicable, the Debtors are hereby directed to execute and deliver such financing statements, security agreements, mortgages, collateral assignments, instruments, and documents, and the Prepetition Agents are hereby authorized to file or record such documents in their discretion without seeking modification of the automatic stay under section 362 of the Bankruptcy Code, in which event all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of this Final Order.

17. No Marshaling/Application of Proceeds. In no event shall any of the Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Collateral; provided that any Prepetition Secured Party shall be entitled to seek to apply such marshaling or other similar doctrines with respect to another Prepetition Secured Party.

18. Proofs of Claim. None of the Prepetition Secured Parties shall be required to file proofs of claim in any of the in the Chapter 11 Cases for any Prepetition Secured Claim or any Superpriority Claim or other claim arising in connection with this Final Order. Notwithstanding any order entered by the Court in relation to the establishment of a bar date, the Prepetition Agents, on behalf of themselves and Prepetition Secured Parties, as applicable, are hereby authorized and entitled, in each of their sole and absolute discretion, but not required, to file (and amend and/or supplement, as each sees fit) a proof of claim and/or aggregate proofs of claim in the Chapter 11 Cases for any such claims; for avoidance of doubt, any such proof of

claim may (but is not required to be) filed as one consolidated proof of claim against all of the applicable Debtors, rather than as separate proofs of claim against each such Debtor. Any proof of claim filed by a Prepetition Agent shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the respective Prepetition Secured Parties. Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation administrative claims) in any of the Chapter 11 Cases shall not apply to the Prepetition Secured Parties.

19. Additional Modification of Stay. To the extent the automatic stay provisions of Section 362 of the Bankruptcy Code would otherwise apply, such provisions are vacated for the limited purposes of permitting the transfer and assignment of any liens, pledges or security interests upon Prepetition Collateral from DNB Bank ASA, New York Branch (f/k/a DNB Nor Bank ASA, New York Branch) to Wilmington Trust, National Association, as successor administrative agent and successor collateral agent under the 2007 Credit Facility Documents.

20. Binding Effect. Subject to paragraph 7 of this Final Order, the provisions of this Final Order shall be binding upon and inure to the benefit of the Prepetition Secured Parties to the extent and as set forth herein, the Debtors, any Committee, and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors). To the extent permitted by applicable law, this Final Order shall bind any trustee hereafter appointed for the estate of any of the Debtors, whether in these Chapter 11 Cases or in the event of the conversion

of any of the Chapter 11 Cases to a liquidation under chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this Final Order.

21. Survival. The provisions of this Final Order and any actions taken pursuant hereto shall survive the entry of any order: (i) confirming any plan of reorganization in any of the Chapter 11 Cases, (ii) converting any of the Chapter 11 Cases to a chapter 7 case, or (iii) dismissing any of the Chapter 11 Cases, and, with respect to the entry of any order as set forth in clause (ii) or (iii) of this paragraph 21, the terms and provisions of this Final Order as well as the Adequate Protection Liens and Superpriority Claim shall continue in full force and effect notwithstanding the entry of any such order.

22. Effect of Dismissal of Chapter 11 Cases. If any of the Chapter 11 Cases is dismissed, converted, or substantively consolidated, such dismissal, conversion, or substantive consolidation of these Chapter 11 Cases shall not affect the rights of the Prepetition Secured Parties under this Final Order, and all of their rights and remedies thereunder shall remain in full force and effect as if the Chapter 11 Cases had not been dismissed, converted, or substantively consolidated. If an order dismissing any of the Chapter 11 Cases is at any time entered, such order shall provide or be deemed to provide (in accordance with Sections 105 and 349 of the Bankruptcy Code) that: (i) subject to paragraph 7 of this Final Order, the Prepetition Liens, Adequate Protection Liens, and Superpriority Claims granted to and conferred upon the Prepetition Secured Parties shall continue in full force and effect and shall maintain their priorities as provided in this Final Order (and that such Superpriority Claims shall, notwithstanding such dismissal, remain binding on all interested parties) and (ii) to the greatest extent permitted by applicable law, this Court shall retain jurisdiction, notwithstanding such

dismissal, for the purpose of enforcing the Prepetition Liens, Adequate Protection Liens, and Superpriority Claims referred to in this Final Order.

23. Order Effective. This Final Order shall be effective as of the date of the signature by the Court.

24. Controlling Effect of Final Order. To the extent any provision of this Final Order conflicts or is inconsistent with any provision of the Motion or any prepetition agreement, the provisions of this Final Order shall control to the extent of such conflict.

Dated: New York, New York

May 16, 2014

/s/ Sean H. Lane
THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE