

Bouhan Falligant Partner Todd Baiad Featured in TradeWinds Weekly Article

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Four creditors are asking a US federal judge to auction a NewLead Holdings vessel in an effort to collect on promissory notes to the Michael Zolotas-led shipowner.

The request is part of growing legal problems encircling the 135,000-dwt bulker NewLead Castellano (built 1990), which has been under arrest off Savannah, Georgia, for more than a month.

Lawyers for Ray Capital, Oppenheim Capital, Cheyenne Holdings and Labroy Shiptrade made the request to Magistrate Judge GR Smith amid mounting costs of the arrest.

“The expense of keeping the vessel in custody is excessive and is unnecessarily eroding the amount of sale proceeds which would be available to satisfy judgment in this case,” said Ray Capital’s lawyers, led by Neil Quartaro at Watson Farley & Williams and Todd Baiad at Bouhan Falligant.

The lawyers have asked the judge to allow the plaintiffs to hire US brokers Compass Maritime and Jacq Pierot Jr & Sons to appraise the vessel to set a minimum bid at 80% of the average of the two estimates.

VesselsValue lists the ship as worth \$7.47m.

The arrest focuses on \$11m in promissory notes issued by Athens-based NewLead, including \$1.67m in debt to Indiana-based Ray, which is allegedly in default.

NewLead’s lawyers, led by Connecticut’s Thomas Tisdale and Ellis, Painter, Ratterree & Adams’ Robert Glenn, argue that the NewLead Castellano arrest was wrongful and have asked the judge to throw out the arrest order.

“The ex-parte arrest and attachment orders were not obtained in good faith,” they wrote.

And they argue that Ray has failed to exercise its right to sell NewLead shares to satisfy the loan and insist that the dispute does not involve maritime contracts.

Ray's lawyers allege that the dispute involves a maritime contract because it is based on ships' mortgages.

And whereas the unpaid notes issued to Ray were convertible into shares, NewLead was delisted from the Nasdaq Global Market in 2014 and its shares are now worth less than a penny apiece on the US over-the-counter (OTC) market. A share sale would not repay the loan, Ray's attorneys argue.

"The standard to show a wrongful arrest is high, and in this case [NewLead's] wrongful arrest argument is legally and factually meritless," the lawyers said.

Meanwhile, the plaintiffs' lawyers allege other costs and debts are piling up for the NewLead Castellano. They argue that crew had been unpaid January. And National Maritime Services president Alan Swimmer, whose company was hired as custodian of the ship during the arrest, told the court he received an e-mail from NewLead asserting that the custodian should pay \$280,000 in mostly pre-arrest costs, including crew wages.

That brings the combined cost of the arrest and pre-arrest debts to nearly \$833,000, Ray alleges.

Registered owner Newlead Castellano Ltd "has not taken no steps to care for the vessel or her crew in the five weeks since the vessel was arrested, and has not even provisioned her. Under the circumstances, it appears that [the company] has functionally abandoned the vessel to her creditors," the company's lawyers allege.

NewLead denies this, arguing that the sums are meant for the substitute guardian to handle the costs during the arrest.

Meanwhile, as TradeWinds has reported in its web edition, another claimant has intervened in the dispute with an even larger lawsuit targeting the NewLead Castellano.

DHL Project & Chartering, a chartering arm of German freight giant DHL, sued NewLead for \$14.3m alleging that the owner is responsible for covering the costs of cargo delays after a port-state-control (PSC) detention in Australia.

NewLead spokeswoman Elisa Gerouki says the company cannot comment on the merits of the case because it has not been served with the lawsuit yet. "In any case, it does look strange that an entity alleges to have suffered the losses of \$14.3m and yet has taken no action whatsoever for more than four years now," she said.

If the request is granted, it would not be the first auction of a NewLead vessel. Last week, the 47,300-dwt Aurora Onyx (built 2002), one of three ships acquired from Dimitrios Kritsas in March, was delivered to new owners after a court-ordered auction in South Africa.

Practice Areas

- Banks & Financial Institutions

Attorneys

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