THE U. S. MARITIME LIEN FOR NECESSARIES
<u>IN THE WAKE OF THE OW BUNKER FINANCIAL COLLAPSE</u>

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THE U.S. MARITIME LIEN FOR NECESSARIES
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by

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Maritime commerce, by its very nature, depends upon continuous provisioning of vessels with fuel, services, and supplies (i.e. "necessaries") from numerous suppliers at multiple and distant ports throughout each maritime engagement. Vessel owners, managers, operators, charterers, and agents (hereinafter referenced as the "vessel entities" or "vessel interests") frequently order vessel services and supplies through intermediary traders, brokers, contractors, middlemen, etc. (hereinafter referenced as "intermediaries"). These intermediaries do not themselves provision the vessel, but instead arrange for and/or contract with local vendors and suppliers (hereinafter referenced as "physical suppliers") to provision the vessel in accord with the order of the vessel entities. When vessel entities order provisioning of vessels on credit, the maritime laws of many nations, including the United States, grant the providers rights and remedies, *i.e.,* maritime liens, which may be enforced against the vessel *in rem* to secure payment.[1]

This paper addresses the rights and obligations of vessel interests, intermediaries, and physical suppliers in the wake of the financial collapse of OW

* The author represents the physical supplier in the *Valero* litigation and appeal referenced herein.

[1] See, generally, William Tetley, *Maritime Liens and Claims* (1985), Ch. I, pp. 1, 13-35; Part XI, pp. 556-625, (hereinafter, *Tetley on Maritime Liens*). The U.S. maritime lien is an *in rem* right in or on the vessel. *Id*., at 28-29. By contrast, England and other countries do not recognize a true lien or *in rem* right in or on the vessel. Those countries grant the suppliers only have a procedural remedy, akin to our Admiralty Rule B or *quasi in rem* attachment. *Id*., at pp. 18-25. This is a significant difference. The U.S. maritime lien can be enforced against the vessel even if the owner has no *in personam* liability, while the English remedy may only be used if the owner has such personal liability. *Sembawang Shipyard, Ltd. v. Charger, Inc.*, 955 F.2d 983, 988-89 (5th Cir. 1992).

Bunker A/S, the Danish international fuel broker, and its multiple national-fuel supply intermediaries, which reportedly serviced nearly seven percent of the world fleet through intermediary arrangements.[2]

THE U.S. MARITIME LIEN FOR NECESSARIES

Historically, U. S. maritime liens under the general maritime law derived "from the usages of commerce, independently of the agreement of the parties and not from statutory regulations." *The Bird of Paradise*, 72 U.S. 545, 555 (1866); *see also*, *Vandewater v. Mills*, 60 U.S. 82 (1856). The lien arose out of a particular service, supply, or event and was a right *in rem* or a privilege in or on the vessel, regardless of the existence or non-existence of the owner's *in personam* liability to the lien holder.[3] As a "secret" right arising by operation of law without notice to creditors or third-parties, maritime liens were historically treated as "*stricti juris*"; and thus such liens "[could] not be extended by construction, analogy, or inference." *Vandewater*, 60 U.S. at 89.

In 1910, Congress enacted the Federal Maritime Lien Act (the "FMLA"), as the uniform rule governing the U.S. maritime lien providing necessaries to a vessel. [4] In pertinent part, the FMLA states that ". . . a person providing necessaries to a vessel on the order of the owner or person authorized by an owner . . . has a maritime lien on the vessel . . .". U.S.C. § 31342(a). The FMLA relieves the supplier of any obligation "to allege or prove in the [*in rem*] action that credit was given to the vessel." 46 U.S.C. § 31342(a)(3).

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[2] Bloomberg Business, November 13-14, 2014, @ bloomberg.com/news/articles/2014-11-13.
[3] Grant Gilmore and Charles L. Black, *The Law of Admiralty* (1975), Ch. I, pp. 35, 36; *Tetley on Maritime Liens*, Ch. I, p. 1, 28-29; Part XI, pp. 619-20.
[4] 46 U.S.C. §§ 971-975, recodified within the Commercial Instruments and Maritime Lien Act, 46 U.S.C. §§ 31341 – 31343.

The purpose of the FMLA is to expedite recognition of maritime liens by American providers.[5] *See, Tramp Oil & Marine, Ltd. v. M/V Mermaid I*, 805 F.2d 42, 46 (1st Cir. 1986) ("The primary concern of the Federal Maritime Lien Act is the protection of American suppliers of goods and services."); *Gulf Trading & Transp. Co. v. The Vessel Hoegh Shield*, 658 F.2d 363, 367 (5th Cir. 1981), *cert. denied,* 457 U.S. 1119 (1982) ("The congressional intent is that an American supplier of goods, services or necessaries to a foreign vessel obtains a maritime lien in the vessel when the goods or services are supplied or performed in the United States.") In 1971, Congress reinforced the physical supplier's lien by deleting the prior statutory requirement that the supplier use reasonable diligence to ascertain whether "the person ordering the repairs, suppliers, or other necessaries was without authority to bind the vessel." 46 U.S.C. § 973, as amended, and now recodified as 46 U.S.C. § 31341.

THE OWB FUELING TRANSACTION AND COLLAPSE OF THE OW BUNKER GROUP

Until their collapse in 2014, the OWB group of companies provided intermediary services between the ship entities and the domestic physical suppliers in distant ports. Typically, a foreign vessel entity would contact a foreign OWB intermediary to arrange for bunkering the ship in the distant port of call. The intermediary would then arrange for the fueling either directly with the physical supplier or indirectly through another OWB intermediary. OWB's arrangements were usually, but not always, formalized with written contracts between each pair of the entities involved in the transaction.[6] The

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[5] In the words of Professor Tetley, "the [American] law is very chauvinistic, reflecting America's pre-disposition to protect the interests of shippers and consignees and the vast service and supply industries on *both* coasts." *Tetley on Maritime Liens*, Ch. I, p. 26 (emphasis added). As members of SEALI, we must forgive Professor Tetley for overlooking our brethren on the West Coast.

[6] See, e.g., *ING Bank N.V. v. M/V TEMARA*, 2016 AMC 2946, 2016 WL 6156320 (S.D.NY. 2016).

physical supplier would issue its sales order confirmation to the OWB intermediary, confirming the supplier's maritime lien on the ship for its services. The physical supplier would then fuel the ship in coordination with the vessel's local agent and the vessel's crew. The vessel master or chief engineer would supervise and control the bunkering and sign the physical supplier's bunker certificate, confirming the fueling in accord with the owner's order and acknowledging the U.S. maritime lien for the fueling services. Typically, the OWB intermediary would charge the owner a percentage of the physical supplier's contract price. The vessel entity would pay the OWB intermediary; and the intermediary (or subsequent intermediary) would then pay the physical supplier.

The 2014 collapse of the OW Bunker parent corporation and its U.S. and other national subsidiaries had a cascading effect in the United States and throughout the maritime world. OWB intermediaries ceased paying the physical suppliers that had fueled the vessels as ordered by vessel interests through OWB intermediaries. Vessel interests stopped paying the OWB intermediaries and declined demands by the physical suppliers for direct payment. The physical suppliers initiated legal action and arrested the ships they had bunkered, asserting the U. S. maritime lien for necessaries directly against the vessels *in rem*. In some instances, the trustees of the defunct OWB entities and/or ING Bank N.V., as secured creditor and purported assignee of the OWB Group of companies, intervened in the suppliers' *in rem* actions, or filed separate suits, claiming the U.S. maritime lien as the contractual supplier of the vessels. In a few cases, vessel interests filed interpleader actions, naming the physical supplier, the OWB entity and/or ING as defendants. In those cases, the owner deposited funds in the amount of the fuel invoice into the court's registry and requested the court to discharge the vessel's *in rem* liability and owner's *in personam* liability, leaving the physical supplier and the OWB/ING interests to fight over the deposited funds.

COMPETING ARGUMENTS AND DIVERGENT RULINGS

In the ensuing tri-partite litigation,[7] the physical supplier asserted the U.S. maritime lien against the vessel as the physical provider of fuel on the order of the owner transmitted by OWB, as authorized by the owner. The owner, as claimant of the vessel, and OWB/ING disputed the physical supplier's lien, contending that the physical supplier fueled the vessel only on the order of OWB, an independent contractor, which did not have authority to bind the vessel. They argued that the physical supplier's sole remedy was its contractual claims against the defunct OWB entity. OWB/ING, for their part, pressed a claim for a maritime lien as the "contract provider" of the fuel on direct order of the owner. In some cases, the owner disputed any *in personam* liability to OWB/ING and the vessel's *in rem* liability to either the physical supplier or OWB/ING. Ultimately, the owner pleaded that the court should equitably protect the owner from double exposure for the fuel charges, *i.e.*, the vessel's *in rem* liability to the physical supplier and the owner's *in personam* liability to OWB under contract.[8]

Thus far, district courts in Louisiana, Texas, New York, Washington, and Florida have handed down rulings in OWB cases; and appeals are pending in the Second, Fifth, and Ninth Courts.[9] The majority of courts have ruled against the physical supplier,

[7] For ease of reference, the term "OWB" shall refer to the OWB intermediary and OWB interests, generally. The term "OWB/ING" shall refer to the joint interests of OWB and ING, generally.
[8] For a comprehensive review of the claims, defenses, issues and authorities, see the briefing of the parties and *amici curiae* in *Valero Marketing & Supply Co. v. M/V ALMI SUN*, No. 16-30194, docketed in the U.S. Fifth Circuit.
[9] *Valero Marketing and Supply Co. v. M/V ALMI SUN*, CA No. 14-2712, 2015 WL 9459971 (E.D.La. 12/2/15); *Valero Marketing v. M/V ALMI SUN*, 160 F.Supp. 3d 973 (E.D. La. 2016); *NuStar Energy Services, Inc. v. M/V COSCO AUKLAND*, No. 4:14-cv-3648, 2015 WL 6457269 (S.D. TX, 10/16/15); *Bunker Holdings Ltd. v. M/V YM Success*, No. C14-6002, 2016 WL 3144403 (W.D. Wash, 6/6/16); *UPT Pool Ltd. v. Dynamic Oil Trading*, 2015 AMC 2070, 2015 WL 4005527 (SDNY, 7/1/15); *O'Rourke Marine*

generally adopting the argument that OWB was an independent contractor; that the physical supplier as OWB's subcontractor, did not fuel the ship on the order of the owner or person authorized by the owner.[10] These courts held generally that the FMLA was to be strictly construed, and that the supplier/ subcontractor did not have a lien unless the owner specifically nominated or selected the physical supplier and/or controlled and/or supervised the supplier's performance.[11]

The physical supplier typically proved that the owner had knowledge of and accepted that supplier as the physical provider and further that the vessel captain and/or chief engineer had direct supervision and control of its fueling and then signed the supplier's bunker certificate, acknowledging fueling in accordance with the owner's order as well as to the supplier's lien under U.S. law.[12] These courts held that such evidence did not establish the owner's order, nomination, control, or supervision.[13]

Some courts upheld the maritime lien claims of OWB, ruling that OWB was the "contract provider" because it was contractually obligated to fuel the vessel on the order of the owner.[14] As such, the lien arose in favor of OWB because it, and not the physical supplier, contracted with the owner.[15]

Services L.P., LLP v. M/V COSCO Haifa, 179 F.Supp. 3d 333 (SDNY 2016); *Martin Energy Services v. M/V BRAVANTE IX*, ---F.Supp. ---, No. 5:14 cv 322 – RH/GRJ, 2017 WL 373449 (N.D. FLA, 1/26/17).

[10] See, e.g., The *Valero* rulings, *supra*.

[11] *Id.*, *see also*, *ING Bank N.V.*, 2016 AMC at 2959, 2016 WL 6156320, at *6, and the cases cited therein.

[12] *Valero*, 160 F. Supp. 3d at 981-982,

[13] *Id.*, at 983-985; see also, *Bunker Holdings, LLC v. M/V YM Success*, 2016 AMC 1723 (W.D. Wash 2016); *contra*, *Martin Energy*, 2017 WL 373449, at *5-9; see also, *Alt. & Gulf Stevedores, Inc. v. M/V GRAND LOYALTY*, 608 F.2d 187, 202 (5TH Cir. 1979) ("Certainly prior authorization would be most relevant and material. But we do not interpret the [FMLA] provisions above cited to require prior authorization. Authorization, actual or fairly presumed, given prior to or during rendition of services, or ratified subsequent to rendition will suffice."); *Stevens Tech. Service v. United States*, 913 F.2d 152 (11th Cir. 1990); *Marine Coatings of Alabama, Inc. v. United States*, 932 F.2d 1370 (11 Cir. 1991); *Marine Fuel Supply & Towing, Inc. v. M/V KEN LUCKY*, 869 F.2d 473, 477-78 (9TH Cir. 1989).

[14] See, e.g. *O'Rourke Marine Services,* 2016 AMC at 339 (. . . only O.W. FarEast, therefore, contracted to supply necessaries to a vessel with an entity authorized to bind the vessel . . .".) (emphasis added).

[15] See, e.g., *Lake Charles Stevedores*, 199 F.3d at 230; *Valero*, 2015 WL 9459971 at *13; *Valero*, 160 F. Supp. 3d at 982.

One New York court held that neither the physical supplier nor OWB possessed a lien.[16] This court had earlier held the physical supplier had no lien because it lacked direct contact or privity with the owner. In a follow-up ruling, the court held that OWB had no lien because it did not physically supply the fuel, had not paid for the fuel, and was not contractually obligated to pay the physical supplier.[17]

The Florida decision adjudicated the competing claims of the physical supplier and OWB/ING in an interpleader action in which the owner deposited payment for the fuel into the court's registry.[18] The court discharged the owner's liability, and then examined the rights of the physical supplier and OWB/ING to the deposited funds under contract, under the FMLA, and under *quantum meruit*.

Despite the competing OWB maritime lien claim, the Florida court upheld the physical supplier's full lien because it had fueled the vessel pursuant to the orders of the vessel captain and chief engineer.[19] The court further found the physical supplier had a contractual claim against the owner, subject to its limited enforcement of its lien against the vessel, and without any direct *in personam* rights against the owner itself.[20] The court also recognized the physical supplier's recovery under a *quantum meruit* recovery pursuant to the court's equitable powers under the interpleader procedure.[21] Finally, the court awarded the remainder of funds to ING/OWB, stating that its result, paying

[16] *ING Bank NV v. M/V TEMERA*, 2016 AMC 2946, 2016 WL 6156320 (SDNY October 21, 2016).
[17] *ING Bank N.V.*, 2016 AMC at 2959-62; 2016 WL 6156320, at *7-8.
[18] *Martin Energy Services, LLC v. M/V BRAVANTE IX*, - - - F. Supp. 3d - - -, 2017 WL 373449 (N.D. Fla., No. 14-322, 1/26/17). The supplier had initiated this action pursuant to a Rule B attachment of a sistership. The owner filed an interpleader counterclaim, and named the supplier and OWB/ING as counter defendants.
[19] *Id.*, at 5-9.
[20] *Id.*, at 5.
[21] *Id.*, at 9.

both the physical supplier and OWB/ING, equitably comported with the original intent of all the parties to the transaction.[22]

ANALYSIS OF ARGUMENTS AND RULINGS

The FMLA governs the present dispute. The statutory standard for recognition of the lien for necessaries is that ". . . [a] person providing necessaries to a vessel on the order of the owner or a person authorized by the owner . . . has a maritime lien on the vessel . . . [and such provider] is not required to allege or prove . . . that credit was given to the vessel . . .". 46 U.S.C. § 31342(a). The provider's lien right is further not subject to a duty to inquire whether the person ordering supplies for the vessel was without authority to do so.[23]

A. Standard of FMLA Interpretation

The competing interests for and against lien recognition couched their arguments in terms of the proper standard of statutory construction.[24] The vessel interests argued for *stricti juris* interpretation to defeat lien recognition of the physical supplier and/or intermediary. The physical supplier urged for an interpretation consistent with Congressional intent to protect the domestic suppliers of vessels. OWB/ING argued for a strict privity of contract and common-law agency standard against the physical supplier's lien, but sought for a more relaxed standard for of its claim as a "contract provider" despite its contractual default in payment of the physical supplier. The dialectic for determination of lien status was often framed in terms of the "relationships of the parties" versus the "totality of circumstances" of the provision.[25]

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[22] *Id.*, at 4, 10-11.
[23] See, discussion, *supra* at 2-3.
[24] See, e.g., *ING Bank*, 2016 AMC, at 2659, WL 6156320, at *7.
[25] See *Valero* briefing referenced in note 8, *supra*.

While these guidelines have support in case law[26], the wording of the FMLA always remains the alpha and omega for recognition or rejection of the U.S. lien for necessaries:

> The proper rule of construction is this: "the literal language of the statute . . . control[s] the disposition of the cases interpreting it." *Crimson Yachts*, 603 F.3d at 872 (quoting H. R. REP. No. 100-918, at 16 (1988), reprinted in 1988 U.S.C.C.A.N. 6104, 6109); see also *Galehead, Inc. v. M/V Anglia*, 183 F.3d 1242, 1244 (11th Cir. 1999) ("The test for determining who is entitled to a maritime lien must come from a plain reading of the statute itself . . ."). Other rules of construction of course are useful in interpreting the statute – but <u>there is no rule requiring the statute to be interpreted more narrowly than called for by the statutory language itself</u>.

Martin Energy, 2017 WL 373449, at *6 (emphasis added).

B. Order of the Owner or of Person Authorized by Owner

The physical supplier claims that it fueled the vessel on the order of the owner or on the order of a person authorized by the owner. Factually, its claim is grounded on 1) the fuel order originating from the owner; and further that 2) the physical supplier received the owner's order from OWB, the entity authorized by the owner to fuel the vessel. The owner and OWB/ING dispute the physical supplier's lien because it fueled the vessel without direct contact, privity of contract, and/or an agency link with the owner.

In this writer's view, the vessel interests/intermediary argument is groundless. The FMLA codifies the entitlement to a maritime lien for necessaries in plain and straight-forward wording – a person providing necessaries to a vessel on the order of

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[26] *Alt & Gulf Stevedores*, 608 F.2d at 202 ("Whether a lien is available must be determined by a fair consideration of the totality of the circumstances."); *Lake Charles Stevedores*, 199 F.3d at 230 (the "distinguish[ing] instances in which the actual suppliers have liens. . . is . . . the nature of the relationships between each pair of entities . . . in the transaction (e.g. agent vs. independent contractor")).

the owner or person authorized by the owner has a maritime lien on the vessel. 46 U.S.C.§ 31342(a).

This standard does not require direct communication of the order by the owner to the physical supplier of necessaries to the vessel. Indeed, such a requirement would be a clear impediment to maritime commerce. This standard further does not mention, much less require, privity of contract or any contractual obligation between the owner and the physical supplier. The FMLA jurisprudence firmly establishes the provider's lien on the vessel despite the absence of any contractual or *in personam* liability of the owner.[27]

A physical supplier is entitled to a lien upon providing necessaries to a vessel on the "order of . . . a person authorized by an owner." 46 U.S.C. § 31342(a). The FMLA requires no talismanic appointment or agency status to be an authorized person. The plain wording states only that the person be authorized by the owner to order provisions for the vessel. *Id.*

This straight-forward authority is evidenced by Section 31341, which lists persons with presumed authority "to procure necessaries for a vessel." 46 U.S.C. 31341. Thus, the test for the person's authority is simple – did the owner authorize the person to procure necessaries for the vessel? Nothing more – no privity of contract, no common law agency, and no *in personam* or contractual obligation between the owner and the provider. This straight-forward authority is wholly consistent with both promoting and

[27] See, e.g., *World Fuel Services Singapore PTE, Ltd. v. BULK JULIANA M/V* 822 F.3d 766, 772-75 (5[TH] Cir. 2016); *Liverpool & London SS Protection Indemnity Assn. v. QUEEN OF LEMAN* M/V, 296 F.3d 350, 354-55 (5[th] Cir. 2002); *Trans-Tec v. Asia M/V HARMONY CONTAINER,* 518 f.3D. 1120, 1126-27 (9[TH] Cir.), *cert. denied*, 555 U.S. 1062 (2008); *Triton Marine Fuels, Ltd. v. M/V PACIFIC CHUKOTKA*, 575 F.3d 409, 414-15 (4[th] Cir. 2009); *Marine Fuel Supply & Towing, Inc. v. M/V KEN LUCKY*, 869 F.2d 473, 477-78 (9[th] Cir. 1989).

expediting maritime commerce for the benefit of the vessel and protecting and expediting the maritime lien of the physical supplier which provisions the vessel on credit.

In the OWB setting, the owner ordered OWB to procure specific fuel for the owner's vessel in distant U.S. ports. The very nature of the owner's order authorized OWB to procure fuel for the vessel by having a U.S. physical supplier bunker the ship in the designated port with the specific quality and quantity of fuel ordered by the owner. This is the literal essence of the FMLA standard. The physical supplier fully satisfied the FMLA standard by its proof that it received the owner's order for fuel from OWB, the person authorized to procure that fuel for the vessel. The statutory standard has been met; and the courts cannot and should not "interpret [the statute] more narrowly than called for by the statutory wording itself." *Martin Energy*, 2017 WL 373449 at *6.

C. Person Providing Necessaries to the Vessel

OWB/ING argue that OWB, and not the physical supplier, is the statutory "provider" by virtue of OWB's direct contact and contract with the owner to fuel the ship since OWB is contractually obligated *in personam* to the owner to fuel the vessel.

This argument is flawed – legally and factually. On a fundamental level, the maritime lien *in rem* arises from the actual service or supply of the vessel which enables the vessel to complete its engagement. The physical supplier, not the intermediary, performed this service. Legally, the maritime lien is entirely independent of the intermediaries' contract with the owner.[28] The lien for necessaries resides legally and

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[28] See, note 28, *supra*.

fundamentally with the physical supplier of the ship, without whose service the vessel cannot engage in maritime commerce.

OWB/ING's interpretation would turn the FMLA on its head and place fiction over fact. This interpretation would have the FMLA reward the defaulting OWB intermediary with a lien at the expense of the fully performing supplier whose services on credit give rise to the lien and for whose particular benefit the FMLA was enacted to protect.

The FMLA, Congressional intent, and the underlying nature of the maritime lien fully rebut the recognition of a lien in favor of OWB, the defaulting intermediary, in place of and at the expense of the physical supplier.

D. The Owner's Plea for Protection from Double Exposure

The owner, as vessel claimant, pleads that the courts should disallow the physical supplier's lien claim on the vessel because the owner may remain liable *in personam* under the OWB contract. This plea sounds in equity, but is misdirected at the physical supplier, which fueled the vessel consistent with the owner's order. The owner's defense and equitable plea, if cognizable, should affect only the owner's liability to OWB, which defaulted its obligations, not the lien of the physical supplier.

Further, the potential of double exposure of an owner *in personam* and the vessel *in rem* is nothing new. In amending the FMLA in 1971, Congress directly addressed the owner's obligation with respect to such exposure:

> Your Committee gave careful consideration to this problem of American materialman where the owner, by chartering or surrendering possession of the vessel, clothes the master thereof with at least apparent authority to bind the vessel for necessaries furnished to the vessel. The question presented was where a loss occurs in this situation, whether it should be suffered by the owner of the vessel, or the American materialman who furnishes such necessaries

> in good faith.
>
> After careful consideration of the entire record, your Committee has concluded that, as a matter of equity, the owner should bear the loss in such a situation.
>
> <u>As a practical matter, the owner can more easily protect himself contractually by bonds or otherwise at the time he charters the vessel, than can the American materialman who furnishes necessaries to a vessel under great economic pressure to put back to sea.</u>

H.R. Rep. No; 92-340, 92nd Cong., 1st Sess. 1, 3, reprinted in [1971] U.S. Code Cong. & Ad. News 1363, 1365 (emphasis added); cited with approval by the Ninth Circuit *in Gulf Trading & Transp. Co. v. M/V TENTO*, 694 F.2d 1191, at 1194 (9th Cir. 1982).

This Congressional *caveat* applies with even greater force when the owner itself orders vessel provisioning through its selected intermediary. The owner can contractually protect itself from the potential of double liability exposure in its agreement with the intermediary. It can decline any lien recognition with a "no lien" clause; and notify the physical supplier of the no-lien prohibition. Alternatively, the owner can require that its chosen intermediary satisfy all supplier charges as a prerequisite to payment and further prescribe a set off for all unpaid charges against any invoice or collection action by the intermediary. As a remedial measure, the owner, as vessel claimant, can file an interpleader action, pay the full sum into the registry of the court, and implead the physical supplier and the intermediary to litigate their respective claims for lien recognition and recovery of the deposited funds.

The owner's double exposure, if any, is a creature of its own making and fully within its power to prevent and remedy.

CONCLUSION

The FMLA is not quantum physics. It is Congress' straight-forward standard for recognition of a lien in favor of providers of vessel necessaries on credit consistent with the realities of modern maritime commerce. Its standard is open and obvious to its users, vessel interests, intermediaries, and physical suppliers. As such, it merits direct and straight-forward recognition of the maritime liens of physical suppliers consistent with the plain statutory wording and the clear intent of Congress.