



## PAX Moot Court Competition 2023 - Peter Nygh Round

### THE CASE

**AllStar Bunker Global** (ASB Global) is a multinational corporation. Its mother company is incorporated in Denmark and has its headquarters in Copenhagen (ASB DK). **AllStar Bunker Americas** (ASB Americas) and **AllStar Bunker Netherlands** (ASB NL) are subsidiaries (separate legal entities) respectively incorporated in Delaware and Rotterdam. ASB Americas is headquartered in Newport, Rhode Island. ASB NL is headquartered in Rotterdam.

**Compass Fuel** (CFuel) is a bunker company incorporated in Nigeria and headquartered in Lagos. It trades in various types and standards of fuel.

**Fine Global Shipping** (FGS) is a Greek shipping company. It is the owner of ms Gracious Advancer, an ocean-going vessel under Panamanian flag.

In February 2022, FGS contracts with ASB Americas to have the ms Gracious Advancer filled with bunker fuel (Marine Gas Oil or MGO) in March 2022, when it would be in the port of Antwerp. FGS specifies that 'giving our company's environmental policy, we are looking for clean oil, LZFO'.

ASB Americas requests its sister company, ASB NL to find a suitable bunker company. ASB NL contracts with CFuel for this purpose. The ms Gracious Advancer is duly filled with 360 MT of bunker fuel in the port of Antwerp on 24 March 2022.

On 27 March 2022, CFuel sends its invoice to ASB NL for US\$ 666 434. ASB Americas, sends the invoice to FGS two days later, on 29 March 2022, instructing FGS to pay directly to ASB NL.

On 10 April 2022, insolvency proceedings are opened for ASB DK in Copenhagen. Following this, on 21 April 2022 insolvency proceedings are also opened for ASB NL in Rotterdam.

FGS pays US\$ 666 434 to ASB NL, as specified on the invoice, on 29 April 2022. The money paid ends up in the Dutch insolvency proceedings, which prevents ASB NL from paying to CFuel.

On 3 June 2022, CFuel is informed of the ongoing insolvency proceedings in The Netherlands and in Denmark. When CFuel investigates the matter, it finds that the ASB group has been involved in a scandal: it marketed its contracts as 'green' while it sold MGO that was not low sulphur fuel oil (LSFO), and thus had a higher sulphur content, which has adverse effects for the environment and for human health.

CFuel rereads its contract with ASB NL. It referred to 'MGO, LZFO', which the sales department had not read to mean LSFO.

CFuel on 4 July 2022 sends its invoice again to ASB NL and sends the same invoice to FGS, explaining that it never received payment.

FGS reacts in a furious mail, stating that 1) it had paid the invoice, which it had received from ASB Americas, to ASB NL and 2) that 80% of the members of the crew of the ms Gracious

Advancer (employees of FGS) had all suffered infections in their throat or lungs, due to toxic fumes inhaled when repairing the motor of the vessel. The exhaust valves system of the motor of the vessel broke down shortly after leaving the port of Antwerp. FGS had to repatriate the entire crew and fly in a new crew from the Philippines. It suspects that water was mixed with the oil delivered by CFuel, over and above the fact that the fuel was not LSFO. It therefore said that it was intending instituting a claim against CFuel for damages.

CFuel responded that if there was water in the fuel, that would be because of a leak of the steam pipe inside the ms Gracious Advancer's fuel tank. The matter of the quality of the fuel that was used remains disputed between the parties.

CFuel, after some additional correspondence that led the parties no closer to a solution, sues ASB NL and FGS at the Commercial Court of Antwerp on 20 October 2022 for the payment of US\$ 666 434 plus interests.

FGS contests the jurisdiction of the Commercial Court of Antwerp and, for the event that that failed, institutes a counterclaim for US\$ 90 000 for damages that it avers it suffered due to the contaminated oil. The damages are partly for the extra crew members that FGS had to pay and partly for reputational damage.

ASB NL is not intending to be present or represented in these proceedings, as the insolvency official in The Netherlands takes the view that if there are any issues, CFuel should file a claim in the insolvency proceedings.

The hearing is set down for 3 May 2023.

The Court has asked the parties to address the following matters:

- 1) Its jurisdiction to hear the claim and the counterclaim;
- 2) The relevance of the insolvency proceedings in Rotterdam for the claims pending in Antwerp (for this question, you may assume that Belgium adopted the UNCITRAL Model Law on Insolvency);
- 3) The possibilities of sending a court-appointed expert to the port of Algeciras (Spain) where the ship is now stationed to make assessments of the fuel that was used and of the causes of the damage to the motor of the vessel;
- 4) The law applicable to the counterclaim.