

**In The
Supreme Court of the United States**

BULK JULIANA LTD. and M/V BULK JULIANA,
her engines, tackle, apparel, etc., *in rem*,

Petitioners,

versus

WORLD FUEL SERVICES (SINGAPORE) PTE LTD.,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

**MOTION FOR LEAVE TO FILE AND
BRIEF OF *AMICI CURIAE* STAR TRIDENT II, LLC,
STARBULK S.A., STAR BULK CARRIERS CORP.,
CHARTLEY WORLD, INC., AND
V&V SHIPPING & TRANSPORT CO.
IN SUPPORT OF PETITIONERS**

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**MOTION FOR LEAVE TO FILE BRIEF OF
AMICI CURIAE STAR TRIDENT II, LLC,
STARBULK S.A., STAR BULK CARRIERS
CORP., CHARTLEY WORLD, INC., AND
V&V SHIPPING & TRANSPORT CO.**

Amici curiae Star Trident II, LLC, Starbulk S.A., Star Bulk Carriers Corp., Chartley World, Inc., and V&V Shipping & Transport Co. respectfully move for leave of Court to file the accompanying brief under Supreme Court Rule 37.3(b). Counsel for Petitioner has consented to the filing of this brief and written consent has been filed with the Clerk of the Court; counsel for Respondent has withheld consent.



**STATEMENT OF INTEREST
OF *AMICI CURIAE***

Amici curiae are owners and operators of marine vessels engaged in commerce throughout the world. These vessels often travel under the direction of charterers who are responsible for procuring their fuel, sometimes referred to as “bunkers” in the industry. As fueling is an obligation of the charterers, the owners and operators are not involved in fuel supply negotiations, are not parties to these contracts, and are often unaware of the circumstances of these transactions.

Due to the global nature of the vessels’ trading activities, refueling is conducted at various ports throughout the world, in jurisdictions with differing remedies available to address claims for nonpayment.

In an effort to minimize these disparities, fuel suppliers have developed contractual terms that uniformly specify the applicable law/jurisdiction for such disputes. Although many of these fuel transactions have no connection to the United States, foreign fuel suppliers have increasingly inserted contractual language specifying the application of United States General Maritime Law. Additionally, the contractual terms typically provide that the fuel supplier shall be entitled to a lien against the vessel notwithstanding the fact that the owner of the vessel is not even party to the contract.

The reason for the foreign fuel suppliers' preference for the application of United States General Maritime Law is clear. Unlike the laws of most other jurisdictions, the Commercial Instruments and Maritime Liens Act (46 U.S.C. § 31301, et seq.) under certain circumstances provides fuel suppliers with a maritime lien against the vessel, permitting a claimant to seize the vessel at the outset of litigation in order to obtain security for the claim. Although this statute was enacted for the benefit of fuel suppliers and other providers of "necessaries" in U.S. ports, the statute is widely used by foreign fuel suppliers to exercise lien rights that were never agreed to by the owners and operators of the vessels. In fact, most of these charter parties between an owner and a charterer contain a provision which specifically prohibits a charterer from taking any action that would encumber the vessel.

Due to the current downturn in marine shipping, numerous charterers and other entities involved in the supply of marine fuel have failed to pay their debts to fuel suppliers. Several substantial charterers and fuel supply intermediaries also have declared bankruptcy in various jurisdictions and/or collapsed entirely. As a result, foreign fuel suppliers are unable to collect from the parties with whom they contracted, and they are using the U.S. law provisions in their contracts to seize the property of contractual strangers in order to secure payment for these debts. Since the beginning of 2014, at least 71 actions have been filed nationwide to seize vessels as security for payment at foreign fuel transactions. *Amici curiae* are the owners and operators of three vessels that have been seized by foreign fuel suppliers as a result of economically distressed charterers' failure to pay their fuel debts.

The Fifth Circuit's decision to permit a foreign fuel supplier to use a U.S. choice of law contractual provision to seize the property of a nonparty to the contract is incorrect and inconsistent with the decisions of other Circuit Courts. Moreover, should the Court allow the Fifth Circuit's erroneous decision to stand without further review, the practical effect will be that these unfair and improper collection actions will persist in many of our nation's busiest and most vital ports. Thus, the decision has far-reaching and negative implications for marine commerce in the United States.

THEREFORE, the *amici curiae* Petitioners move that this Court grant their Motion for Leave to File a

Brief *Amici Curiae* and that the Court accept the attached Proposed Brief *Amici Curiae* in support of the positions of Petitioner.

Respectfully submitted,

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INTEREST OF *AMICI CURIAE*¹

Amici curiae listed in the Appendix I are owners and operators of vessels engaged in international commerce. Vessels owned and/or operated by *amici curiae*, like the BULK JULIANA, were arrested by foreign fuel suppliers seeking to collect for debts incurred by charterers under contracts between the fuel suppliers and the charterers.² The erroneous analysis employed by the court below produced a decision that is deeply inconsistent with the principles of U.S. law and the purpose of the statute upon which the purported maritime lien is based. The Fifth Circuit's decision has a wide-ranging impact upon maritime trade in the United States, and, if it is allowed to stand, it could have a chilling impact upon maritime commerce in the affected ports.



SUMMARY OF ARGUMENT

The Fifth Circuit's decision to permit the creation of a maritime lien by contract against the property of

¹ Petitioner has consented to the filing of this brief. Respondent has refused to provide its consent. Counsel of record for both parties received notice at least 10 days prior to the due date of *amici curiae's* intention to file this brief. No counsel for a party authored this brief in whole or in part, and no counsel for a party (nor a party itself) made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici* or their counsel made a monetary contribution to its preparation or submission.

² See Appendix II for a list of the three pending cases in which *amici curiae* are parties.

a non-party (“owner”) to the contract is improper, and the application of this reasoning has resulted in the widespread arrest of vessels for debts created by charterers and not owners. The decision has furthered the split among the circuits, creating uncertainty in an industry of substantial commercial importance. The Court should resolve this uncertainty and disallow improper use by foreign suppliers of the U.S. maritime lien statute to seize the property of contractual strangers.

◆

ARGUMENT

I. THE FIFTH CIRCUIT’S ERRONEOUS DECISION IN *BULK JULIANA* EXPANDS A SPLIT AMONG THE CIRCUITS ON WHETHER A MARITIME LIEN CAN ARISE AGAINST A VESSEL, NOTWITHSTANDING THE FACT THAT THE OWNER OF THE VESSEL IS NOT A PARTY TO THE CONTRACT.

With the Fifth Circuit’s adoption of the faulty analysis employed by the Ninth Circuit³ and the Fourth Circuit,⁴ federal district courts for a significant number of vital ports along the U.S. east, west, and Gulf coasts will permit foreign suppliers of necessities

³ *Trans-Tec Asia v. M/V HARMONY CONTAINER*, 518 F.3d 1120 (9th Cir. 2008).

⁴ *Triton Marine Fuels, Ltd. v. M/V PACIFIC CHUKOTKA*, 575 F.3d 409 (4th Cir. 2009).

to seize vessels pursuant to lien rights purportedly conferred by a choice of law clause to which the vessels' owners never agreed. However, the First, Second, and Eleventh Circuits have properly identified the flaws in this reasoning, and have refused to grant such extraordinary rights to foreign suppliers' claims for transactions in foreign ports having no connection whatsoever to the United States.⁵ Although the circuits have grappled with these issues for many years, a split remains and has widened with the Fifth Circuit's *BULK JULIANA* opinion. The Court should take this opportunity to resolve the inconsistent positions of the Circuit Courts and determine that foreign suppliers should not be entitled to use a U.S. choice-of-law provision to usurp the property rights of non-parties to the contracts upon which the liens allegedly arise.

⁵ *Tramp Oil & Marine, Ltd. v. M/V MERMAID I*, 805 F.2d 42 (1st Cir. 1986); *Rainbow Line, Inc. v. M/V TEQUILA*, 480 F.2d 1024 (2d Cir. 1973); *Trinidad Foundry and Fabricating, Ltd. v. M/V K.A.S. CAMILLA*, 966 F.2d 613 (11th Cir. 1992).

II. THE ALLOWANCE OF MARITIME LIENS OF FOREIGN SUPPLIERS HAS SPAWNED AT LEAST 71 VESSEL SEIZURE SUITS SINCE 2014, TURNING U.S. COURTS INTO COLLECTIONS ADMINISTRATORS FOR FOREIGN DEBTS HAVING NO CONNECTION TO THE U.S. OTHER THAN A U.S. CHOICE-OF-LAW CLAUSE THAT WAS NEVER AGREED TO BY THE OWNER OF THE PROPERTY PURPORTEDLY SUBJECT TO THE LIEN.

Since at least some U.S. courts have permitted foreign necessities suppliers' lien claims pursuant to U.S. choice-of-law provisions in contracts between the suppliers and charterers, these suppliers have increasingly adopted terms and conditions that attempt to invoke U.S. law and maritime lien rights notwithstanding the lack of any connection between the United States and the transactions at issue. In the wake of the recent downturn in the marine shipping industry, many charterers and other entities in the supply chain for fuel have been unable to cover their debts, resulting in many companies filing for bankruptcy and/or collapsing entirely. Left with only their purported lien pursuant to the choice-of-law language in their contracts, foreign suppliers are using U.S. courts to exercise lien rights against property, i.e., vessels, that the owners never agreed or authorized to serve as security for the debts of the charterer or other third-party with whom the foreign supplier contracted. Since the beginning of 2014, at least 71 actions have been filed nationwide to seize vessels as security for

payment of foreign fuel transactions.⁶ These circumstances have clogged U.S. courts with collection actions for debts that have no meaningful connection to the United States, and that should be decided by a foreign court pursuant to foreign law more logically connected to the transaction at issue. With this case, the Court has the opportunity to put an end to these improper attempts to create jurisdiction via contract, and also harmonize the split among the U.S. Circuit Courts on this issue.



⁶ See Appendix III for a list of the cases involving other parties of which *amici curiae* are aware.

CONCLUSION

For the foregoing reasons, the Court should grant Bulk Juliana's Petition.

Respectfully submitted,

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APPENDIX I

List of Amici Curiae

Star Trident II, LLC

Starbulk S.A.

Star Bulk Carriers Corp.

Chartley World, Inc.

V&V Shipping & Transport Co.

APPENDIX II

Cases of Amici Curiae

C.A. No. 4:15-cv-00460; *Topoil AB v. M/V ORUC REIS*,
her engines, boilers, tackle, apparel etc., in rem; South-
ern District of Texas, Houston Division

C.A. No. 2:15-cv-00463; *JH Marine Co., Ltd. v. M/V*
STAR NASIA, her engines, tackle, machinery, etc. et al;
Southern District of Texas, Corpus Christi Division

C.A. No. 4:16-cv-00451; *Trans-Tec International S.R.L.*
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ern District of Texas, Houston Division

APPENDIX III***Cases Involving Other Parties***

Case No.	Style of Case	Location of Delivery
4:15-cv-03496	<i>ING Bank N.V. v. M/V VOGUE FIESTA, IMO No. 9168154</i> ; Southern District of Texas, Houston Division	Singapore
8:15-CV-02763-EAK-MAP	<i>ING Bank N.V. v. M/V STI FULHAM, IMO No. 9688374</i> ; Middle District of Florida, Tampa Division	Singapore
7:15-cv-248	<i>ING BANK N.V. v. M/V CHAMPION PULA, IMO No. 9341146</i> ; Eastern District of North Carolina, Southern Division	Singapore
3:15-cv-00805-JWK-RLB	<i>ING BANK N.V. v. M/V PORTLAND, IMO No. 9497854</i> ; Middle District of Louisiana	China
1:15-cv-03629-CCB	<i>ING BANK N.V. v. M/V MARITIME KING, IMO No. 9574145</i> ; District of Maryland	India
3:15-cv-00777-SDD-EWD	<i>ING BANK N.V. v. OD-FJELL ASIA II PTE LTD</i> ; Middle District of Louisiana	Singapore

App. 4

Case No.	Style of Case	Location of Delivery
1:15-cv-00196	<i>ING BANK N.V. v. M/V YAN DANG HAI, IMO No. 9488229</i> ; Southern District of Texas, Brownsville Division	South Korea
2:15-cv-05708-ILRL-SS	<i>ING BANK N.V. v. MINS-HENG FINANCIAL LEASING CO LTD., SHANGHAI GUODIAN SHIPPING COMPANY LTD., FUJIAN GUHOHANG OCEAN SHIPPING (GROUP) CO. LTD. AND SHANGHAI FUJIAN GUOHANG OCEAN SHIPMANAGEMENT CO. LTD.</i> ; Eastern District of Louisiana	China
3:15-cv-00302	<i>ING BANK N.V. v. M/V GENCO PIONEER, IMO No. 9197935</i> ; Southern District of Texas, Galveston Division	Brazil
3:15-cv-01250-MMH-PDB	<i>ING BANK N.V. v. M/V GLOVIS SUPERIOR, IMO No. 9674189</i> ; Middle District of Florida, Jacksonville Division	South Africa

App. 5

Case No.	Style of Case	Location of Delivery
2:15-cv-00446	<i>ING BANK N.V. v. M/V JUMBO VISION</i> , IMO No. 9153642; Southern District of Texas, Corpus Christi Division	Singapore
2:15-cv-05260-MLCF-KWR	<i>ING BANK N.V. v. M/V WEI HE</i> , IMO No. 9601091; Eastern District of Louisiana	Singapore
4:15-cv-03040	<i>ING BANK N.V. v. M/V SITEAM EXPLORER</i> , IMO No. 9326902; Southern District of Texas, Houston Division	South Korea
2:15-cv-00437-RGD-DEM	<i>ING BANK N.V. v. M/V AFRICAN SWAN</i> , IMO No. 9303364, <i>et al.</i> ; Eastern District of Virginia, Norfolk Division	China, Russia, and Oman
4:15-cv-02371	<i>ING BANK N.V. v. M/V K. BRAVE</i> , IMO No. 9303091; Southern District of Texas, Houston Division	Panama
1:15-cv-00390-WS-N	<i>ING BANK N.V. v. M/V STELLAPRIMA</i> , IMO No. 8912326; Southern District of Alabama, Southern Division	Belgium

App. 6

Case No.	Style of Case	Location of Delivery
2:15-cv-03204-JCZ-JCW	<i>ING BANK N.V. v. M/V LUGANO, IMO No. 9244087</i> ; Eastern District of Louisiana	Turkey
4:15-cv-02187	<i>ING BANK N.V. v. M/V PU LAN HAI, IMO No. 9546095</i> ; Southern District of Texas, Houston Division	Russia
1:15-cv-00292-MAC	<i>ING BANK N.V. v. M/V NORGAS ORINDA, IMO No. 9240122</i> ; Eastern District of Texas, Beaumont Division	Spain
3:15-cv-05494-RBL	<i>ING BANK N.V. v. M/V YM MARCH, IMO No. 9298997</i> ; Western District of Washington at Tacoma	Russia
4:15-cv-02004	<i>ING BANK N.V. v. M/V CLIPPER IYO, IMO No. 9470818</i> ; Southern District of Texas, Houston Division	Brazil
4:16-cv-02106	<i>TRANS-TEC INTERNATIONAL S.R.L. d/b/a TRANS-TEC v. M/V GEORGIOS P</i> , Southern District of Texas, Houston Division	Trinidad/ Tobago

App. 7

Case No.	Style of Case	Location of Delivery
3:15-cv-00879-SI	<i>WORLD FUEL SERVICES EUROPE, LTD., d/b/a TRANS-TEC v. M/V OCEAN HERO</i> ; District of Oregon, Portland Division	Spain
1:15-cv-01465-CCB	<i>WORLD FUEL SERVICES EUROPE, LTD., d/b/a TRANS-TEC v. M/V TEMARA</i> ; District of Maryland, Northern Division	Russia
2:15-cv-00082	<i>WORLD FUEL SERVICES EUROPE, LTD., d/b/a TRANS-TEC v. M/V BBC VERMONT</i> ; Southern District of Texas, Corpus Christi Division	Spain
2:15-cv-00488-JTM-KWR	<i>WORLD FUEL SERVICES EUROPE, LTD., d/b/a TRANS-TEC v. M/V DEVON BAY</i> ; Eastern District of Louisiana	Brazil
3:15-cv-05881-RBL	<i>ING BANK N.V. v. M/V LIGARI, IMO No. 9279513</i> ; Western District of Washington at Tacoma	Singapore

App. 8

Case No.	Style of Case	Location of Delivery
2:15-cv-06601-SM-KWR	<i>ING BANK N.V. v. M/V DIAMANTINA</i> , IMO No. 9494137; Eastern District of Louisiana	South Korea
2:16-cv-0007-NJB-KWR	<i>ING BANK N.V. v. ZHENG YAO SHIPPING GROUP, LTD.</i> ; Eastern District of Louisiana	Singapore
1:16-cv-00095-KBF	<i>ING BANK N.V. v. M/V TEMARA</i> , IMO No. 9333929; District of Maryland	Panama
1:16-cv-01242-GBD	<i>ING BANK N.V. v. M/V AFRICAN SWAN</i> , IMO No. 9303364; Eastern District of Virginia, Norfolk Division	China
1:16-cv-00097-LPS	<i>ING BANK N.V. v. M/V EMERALD STRAIT</i> , IMO No. 9488592; District of Delaware	South Africa and China
1:16-cv-10368-FDS	<i>ING BANK N.V. v. M/V EMERALD STRAIT</i> , IMO No. 9488592; District of Massachusetts	South Africa and China
1:16-cv-00559-RDB	<i>ING BANK N.V. v. M/V OCEAN HARMONY</i> , IMO No. 9267106; District of Maryland	Greece

App. 9

Case No.	Style of Case	Location of Delivery
1:16-cv-02051-KBF	<i>ING BANK N.V. v. M/V VOGUE FIESTA, IMO No. 9168154</i> ; Southern District New York	Singapore
2:16-cv-02388-LMA-JWC	<i>ING BANK N.V. v. M/V CLIPPER KASASHIO, IMO No. 9370135</i> ; Eastern District of Louisiana	Brazil
1:16-cv-03456-KBF	<i>ING BANK N.V. v. M/V MARITIME KING, IMO No. 9574145</i> ; District of Maryland	India
2:16-cv-06534-SSV-KWR	<i>ING BANK N.V. v. M/V THEOFANO, IMO No. 9224025</i> ; Eastern District of Louisiana	Singapore
2:16-cv-09634-NJB-KWR	<i>ING BANK N.V. v. M/V JAWOR, IMO No. 9452608</i> ; Eastern District of Louisiana	Singapore
2:16-cv-01003-PM-KK	<i>ING BANK N.V. v. M/V CHARANA NAREE, IMO No. 9296303</i> ; Western District of Louisiana, Lake Charles Division	Gibraltar

Case No.	Style of Case	Location of Delivery
3:16-cv-03663-SI	<i>VAN-OIL PETROLEUM LTD. v. MARATHA PROMISE, IMO No. 9433809</i> ; Northern District of California	Peru
3:14-cv-00882-WWE	<i>MONJASA DMCC v. M/V OCEAN TOMO</i> ; District of Connecticut	Gibraltar
2:15-cv-00497-CJB-MBN	<i>MONJASA A/S v. M/V UNITED MOJANDA, IMO No. 9632612</i> ; Eastern District of Louisiana	Togo
4:15-cv-01044	<i>MONJASA A/S v. M/V VENTA, IMO No. 9074729</i> ; Southern District of Texas, Houston Division	Pakistan
8:16-cv-00904-EAK-JSS	<i>MONJASA A/S v. M/V KINATSI</i> ; Middle District of Florida, Tampa Division	Denmark
1:15-cv-00022	<i>WORLD FUEL SERVICES (SINGAPORE) PTE. LTD. d/b/a BUNKERFUELS v. M/V MANDARIN GLORY</i> ; Southern District of Texas, Brownsville Division	China

Case No.	Style of Case	Location of Delivery
3:14-cv-01434-SEC	<i>WORLD FUEL SERVICES d/b/a DIVISION OF FALMOUTH PETROLEUM LIMITED v. M/V EXELIXIS</i> ; District of Puerto Rico	United Kingdom
2:14-cv-00264-MWF-VBK	<i>WORLD FUEL SERVICES v. M/V BELSTAR</i> , IMO No. 9490648; Central District of California	Singapore
2:15-cv-05975-ILRL-DEK	<i>ING BANK N.V. v. M/V BULK FINLAND</i> , IMO No. 9691577; Eastern District of Louisiana	Panama
3:15-cv-00024	<i>ING BANK N.V. v. M/V WHITE DIAMOND</i> , IMO No. 9330666; Southern District of Texas, Galveston Division	South Africa
3:15-cv-00034	<i>ING BANK N.V. v. M/V AGISTRI</i> , IMO No. 9597018; Southern District of Texas, Galveston Division	United Arab Emirates
2:15-cv-01500-CCC-JBC	<i>ING BANK N.V. v. M/T CHRISOPIGI LADY</i> , IMO No. 9288681; District of New Jersey	Panama

Case No.	Style of Case	Location of Delivery
2:15-cv-1257-DCN	<i>ING BANK N.V. v. M/V COSCO NAGOYA</i> , IMO No. 9380271; District of South Carolina, Charleston Division	Netherlands
2:15-cv-00117-RAJ-DEM	<i>ING BANK N.V. v. M/V MARIA CRISTINA RIZZO</i> , IMO No. 9448592; Eastern District of Virginia, Norfolk Division	Singapore and Taiwan
2:15-cv-00870-KDE-SS	<i>ING BANK N.V. v. M/V RBD ITALIA</i> , IMO No. 9448619; Eastern District of Louisiana	Singapore
2:15-cv-00890-LMA-SS	<i>ING BANK N.V. v. M/V NAVE COSMOS</i> , IMO No. 9457024; Eastern District of Louisiana	Denmark
1:15-cv-01488-JKB	<i>ING BANK N.V. v. M/V TEMARA</i> , IMO No. 9333929; District of Maryland	Panama
3:15-cv-00147	<i>ING BANK N.V. v. M/V SITEAM VOYAGER</i> , IMO No. 9326926; Southern District of Texas, Galveston Division	South Korea

Case No.	Style of Case	Location of Delivery
1:15-cv-00261-S-LDA	<i>ING BANK N.V. v. M/V MARONI, IMO No. 8002078</i> ; District of Rhode Island	United Arab Emirates
4:15-cv-00409	<i>EASY STREET LTD. v. M/V MANDARIN GLORY</i> ; Southern District of Texas, Houston Division	Chile
2:14-cv-00792-SM-DEK	<i>O.W. BUNKER & TRADING A/S v. M/V KYRIAKOS, IMO No. 9077317</i> ; Eastern District of Louisiana, New Orleans Division	Turkey
3:14-cv-00665-KI	<i>O.W. BUNKER GERMANY GMBH v. M/V CENTENARIO FORZA, IMO No. 9500041</i> ; District of Oregon, Portland Division	Gibraltar
1:14-cv-0052	<i>ENDOFA DMCC v. M/V BRIGHT OCEAN</i> ; Southern District of Texas, Brownsville Division	Gibraltar
7:14-cv-0042-MAD-TWD	<i>O.W. BUNKER FAR EAST (S) PTE LTD. v. M/V FRITZ, IMO No. 9415155</i>	Russia

Case No.	Style of Case	Location of Delivery
1:14-cv-00297-CG-N	<i>A/S DAN-BUNKERING LTD. v. M/V CENTRANS DEMETER, IMO No. 9445174</i> ; Southern District of Alabama, Southern Division	China
3:14-cv-06002-BHS	<i>BUNKER HOLDINGS LTD. v. M/V YM SUCCESS, IMO No. 9294800</i> ; Western District of Washington at Tacoma	Russia
2:14-cv-02702-HGB-JCW	<i>CHEMOIL LATIN AMERICA INC. v. M/V BIRCH 6</i> ; Eastern District of Louisiana	Panama
3:15-cv-05851-RBL	<i>KPI BRIDGE OIL LTD. v. M/V EVERGLORY, IMO No. 9628893</i> ; Western District of Washington at Tacoma	Sri Lanka
3:14-cv-00082	<i>SCANDINAVIAN BUNKERING AS v. M/V MALENE ØSTERVOLD, IMO No. 6415051</i> ; Southern District of Texas, Galveston Division	Ireland

Case No.	Style of Case	Location of Delivery
2:14-cv-02898-ILRL-SS	<i>UNITED BUNKERING & TRADING (HK) LIMITED v. M/V AQUA-PRIDE</i> ; Eastern District of Louisiana, New Orleans Division	China
2:14-cv-01311-CCC-MF	<i>UNITED BUNKERING & TRADING (ASIA) PTE LTD v. M/V BEKS HALIL</i> ; District of New Jersey	Panama
