

# Lloyd's List

## The declining art of repossession

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Fewer small shipowners and banks more willing to restructure loans have seen ship repossessions kept to a minimum in current global recession

WHEN the financial and economic crisis hit, spreading its contagion into shipping markets, there was widespread expectation that ship repossessions by banks and other financiers would soar as shipowners were unable to meet their loan obligations. Certainly, during previous shipping market slumps that is what happened on a significant scale.



This time so far that scenario has not materialised to anything like the extent that was expected. There have been some shipowner failures and vessels taken back by their lenders. But for the most part, banks have been reluctant to foreclose and have preferred to restructure loans where possible.

Another reason why there have been relatively few ships being repossessed is that the structure of the industry has changed from the last time the industry ran into trouble in the late 1990s. In general shipping has become more corporate. There are fewer small shipowning companies with only a handful of ships or just one. That trend is apparent from surveys such as the annual review of the Greek fleet conducted by Petrofin Bank Research. Most of the new generation of Greek shipowners have a far more corporate approach than the personal touch preferred in the past. This change means that where companies do run into financial problems there is more likely to be a corporate solution, involving an overall company restructuring, rather than a move to repossess individual vessels or small fleets.

In addition, many owners accumulated substantial cash piles during the boom years and have been able to withstand the lower rates. The fact that the dry bulk market recovered much quicker than forecast and has stabilised at rates that are still healthy by historic standards has limited the difficulties in that sector. Therefore the main problem sectors are those where rates settled close to or below operating costs. In the containership sector, which suffered the most pain, there are virtually no small shipowners, with nearly all vessels owned by corporates of varying types. Some of them have run into difficulties, but so far have managed to restructure finances and fleets to keep lenders at bay, though one or two might still face problems.

Tankers have also not fared too badly, again with most owners now being corporate entities.

This means that the main ship types that are still populated by small scale owners are in the small bulk carrier, general cargo, reefer and small gas carrier sectors. It is here where the main shipowner casualties and repossessions are likely to take place.

Trevor Fairhurst, managing director of Fairwind, part of the Denholm Group, is one of the leading practitioners in the task of repossessing ships on behalf of lenders. He told Lloyd's List that in the last 12 months he has been involved in four repossessions. This is far fewer than might have been expected given the scale of the downturn, but he confirmed that there is now much more emphasis on corporate restructuring rather than individual ship repossessions. Indeed, that is the main reason why Denholm recently teamed up with corporate restructuring specialist Zolfo Cooper to combine their respective specialisms.

"Experienced shipping banks will generally see problems advance and will try to stay with borrowers as long as possible, though there are not many shipping bankers left who went through the previous shipping down cycle," he said.

Fairwind was involved in the repossession of some 50 ships of Adriatic Tankers in the late 1990s. "But the situation has changed with regard to repossession and workouts since then, with more corporate structures and solutions, often involving company insolvency specialists, hence Denholm's new arrangement with Zolfo Cooper," said Mr Fairhurst.

Workouts now tend to be more sophisticated operations than they were in the past. "In those days there were more loans to individual shipowners using single purpose vehicles with owners providing individual security." Now this is less common and most ships are owned by corporates with extensive financial security and collateral behind them so the likelihood of major failures of fleets is less.

Mr Fairhurst told Lloyd's List that where the process of repossessing ships is still necessary it requires specialist knowledge and contacts and sometimes various forms of subterfuge in order to locate and take back vessels from owners, some willing to go to great lengths to avoid giving up their assets.

Owners facing problems usually initially become apparent when they fail to make due repayments of loans. Sometimes workout agreements can be made with banks for holidays in payments of principal where the lender is confident that the owner has reasonable prospect of recovering. But if it is unable to pay interest on the principal then it is likely to have more serious problems. Mr Fairhurst explained that in the case of such defaults time can be given to correct the situation, possibly by appointing someone he described as a 'minder' to check the position of creditors and maritime lien holders.

If this is not possible or effective then the next stage is likely to be a decision to seek repossession. Initially this will be by issuing a request that the ship(s) proceed to a port in an appropriate jurisdiction with a view to a court sale. The problems start when the owner is unwilling to co-operate and stronger action has to be taken to find and take over the vessel on behalf of lenders.

Mr Fairhurst said: "I am sometimes described as a 'licensed pirate', taking over ships against the owner's will. But major challenges can arise when rogue owners are effectively looking to steal the asset and are not being honest."

There have been a few major corporate workouts during the current downturn, such as Britannia Bulk, Allocean and Eastwind. Zolfo Cooper's Australian affiliate was the receiver in the Allocean workout. These types of workouts are completed on a corporate scale with the active participation of specialist maritime law firms.

"This means that the need for traditional 'smash and grab' repossessions is far less than it was and the need for chasing ships and owners is not so common, but there are still some rogue owners out there and there is a continuing need for this type of activity," said Fairwind's managing director. "I do the rough and tumble." At the extreme this can involve a variety of tactics of greater or lesser sophistication to persuade owners that the game is up and they must surrender their vessels. Sometimes this can go as far as physically removing the vessel from the owner's possession.

Where repossessions are needed the traditional techniques could still come into play. Usually the aim is to move ships to a friendly jurisdiction for court sales.

He outlined a typical scenario, where a ship to be repossessed is taken over. One of the first tasks is to negotiate agreements to pay off and repatriate the crew because they would usually have first call under any maritime lien. A directly employed 'watch crew' will then be placed onboard. Existing insurances will be cancelled and new cover put in place with specialist underwriters. Efforts are made to reach agreements to pay off other outstanding creditors or provide bank guarantees. The harbourmaster is also likely to hold a possessory lien and will need to be satisfied that the ship is safe to sail.

Having reached agreement with the harbourmaster the next task is to reach agreement with all the arresting parties so that they lift their arrests in a co-ordinated manner, ideally late on a Friday afternoon before the Court closes, which then leaves a window for the ship to be sailed away to a port where it can be sold. One favoured location for such judicial sales is Gibraltar.

In some cases owners in default will simply seek to abandon vessels, often with their crew still onboard. The continued incidence of abandonments is regularly highlighted by the International Transport Workers' Federation.

Nowadays, lenders deciding to take the ultimate step of closing on owners and repossessing ships are most likely to rely on insolvency firms and lawyers to carry out the process even though in the modern corporate world the need for the specialist 'art' of physically repossessing ships from unco-operative owners may be a declining one, it has not entirely disappeared yet.

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