

# FROM EACH ACCORDING TO HIS ABILITY, TO EACH ACCORDING TO HIS NEEDS!

By George Weltman

As one can imagine, there was no shortage of deals nominated in this category and the problems dealt with ranged from mere covenant breaches to debt restructurings with equity infusions. In the majority of instances, the main culprit was the breach of the loan to value covenant, one of the few covenants to sneak into the loan documents of the recent past. With cash flow and on hand liquidity sufficient to service debt, these were largely non-events but for the price extracted by the banks for the necessary waivers. The breach provided the leverage the banks needed to repair their balance sheets and offset their higher funding costs. For others, it was a matter of survival. Armada and Eastwind never made it out of triage, while CSAV and ZIM were eventually taken off of the resuscitator to survive another day. The common feature and what made each of these restructurings work is expressed in the quote from Karl Marx which begins this article or, perhaps more appropriately, the maritime concept of general average, under which all share equally in the risks of a voyage.

Many of the nominees are worthy of mention. AMA staked out a dominant position restructuring Norwegian high yield bonds used in the offshore sector. AMA represented the bondholders and won mandates in 7 deals, totaling over \$2 billion. Solutions ranged from M&A processes, to the injection of new debt, to taking the companies through a structured bankruptcy.

When the borrower is upfront and frank with its lenders, wonders can be accomplished. Approached by Paragon in the 4th quarter 2008, its banks, which included HSH Nordbank, Commerzbank, Bank of Ireland, HBOS, HypoVereinsbank and First Business Bank, were able to cooperate in restructuring the various facilities. A key part of the process was that all banks received similar terms with loans being amended into amortizing term loan facilities, all with similar profiles to zero at similar vessel ages. Moreover, as some charterers were hinting at the downward renegotiation of charter hire, it was agreed that all the banks would adapt their repay-

ment schedules in a similar way, whether or not their particular charter was likely to be renegotiated. Additionally, while most financial covenants were waived for 2009, there was agreement that all bank loans would be covered 100% by the value of their security by January 1, 2010. And perhaps most importantly, the banks knew where help was going to come from and, in an unusual twist, allowed the payment of dividends, albeit at a restricted level. They understood that the company would need to demonstrate the ability to pay dividends, in order to attract further equity. The upshot was that the company became profitable in 2009 and now has \$150 million in cash on its balance sheet, as a direct result of the restructuring and subsequent equity raises.

While the cruise industry is generally outside our purview, it is worth noting that both in terms of size and parties involved, DnB NOR's restructuring of NCL's debt was a standout. Undertaken in a period of uncertainty in both the cruise and financial sectors,

DnB, as sole advisor, had to find a solution for a complex financing structure of \$2.5 billion, which involved 21 banks and 3 ECAs spread across 6 facilities. Making it more difficult was the varying security positions of the lenders, limited time before the financial covenants were breached and the need for an "all or none" solution. DnB was able to mediate an amicable solution that eased the steep repayment schedules in line with the reduced EBITDA in a timely fashion.

As advisor to Global Ship Lease, Citi had the unenviable challenge of negotiating a temporary waiver for GSL's breach of its LTV covenant while at the same time trying to convince the banks to release the new funds that the company required to purchase the CMA CGM Berlioz. Despite the problems in the container sector and the company's predominant exposure to a single charterer, CMA CGM, Citi was able to get the banks to agree to a waiver through the 1Q 2011 and the release of the needed funds.

Of all the shipping sectors, the prospects for container shipping were the bleakest. For the first time in over 20 years, demand, which had historically grown at a 10% CAGR, declined. Volumes and freight rates collapsed to unprecedented levels. Meanwhile, fueled by the easy financing of the German KG system and the demand for ever larger ships, capacity was growing exponentially. An unstoppable force met an immovable object resulting in a train wreck, with tonnage laid up, orders deferred and cancelled and slow steaming becoming de rigueur for economic rather than environmental reasons. While all the container lines were hard hit,

two regional players, lacking the financial strength of the big players, came under pressure from their orderbook and related debt, necessitating an overhaul of their respective balance sheets. Unlike Solomon, we were unable to choose a clear winner so we have awarded the Restructuring Deal of the Year to the CSAV and ZIM restructurings, whose key advisors were respectively, HSH Corporate Finance and Goldman Sachs. And while most credit goes to the overall advisors in each, both deals had major debt re-structuring issues that were ably handled by BNP Paribas as agent bank for the key syndicates.

## ZIM

What do you do when you are faced with a \$1 billion funding gap and about \$2 billion in debt? If you are ZIM Integrated Shipping, presumably, you have been in touch with your lenders and then you call Goldman Sachs. ZIM was one of the few consensual, out of court, non-government backed restructurings, which achieved resolutions on multiple fronts including:

- Renegotiation of a significant orderbook from multiple shipyards.
- Retention of committed funding for new vessels.
- Retention of export credit agencies in existing and

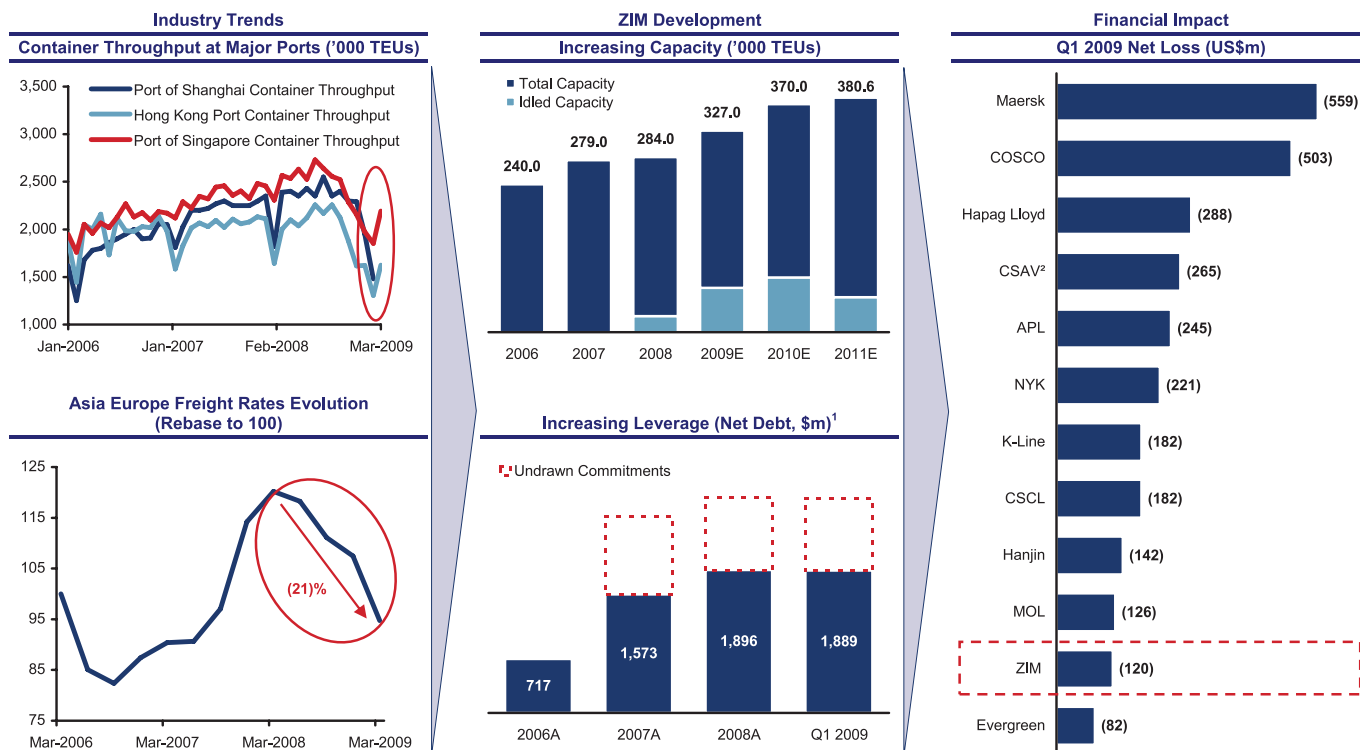
future funding.

- Significant postponement of scheduled debt repayments from banks and bondholders.
- Renegotiation of charter contracts with all counterparties.
- Equity contribution approved by shareholders.

Like its peers, ZIM participated in the shipping lines gone wild party increasing its capacity by 58.6% from 2006 with a commensurate increase in debt, excluding undrawn commitments, of 263.5%. What happened and the consequences of this aggressive growth strategy are shown pictorially in figure 1.

## Review of Recent Restructuring Precedent

### What Was the Problem?



Source: MPA Singapore (Mar-09), Clarkson and Company filings, broker reports, Factiva

<sup>1</sup> Net Debt as per financial statements, includes financial leases and derivatives. Undrawn commitments as per facility agreements.

<sup>2</sup> Estimate.

FIGURE 1

The solution required concessions from all of ZIM's stakeholders. And since neither ZIM or, for that matter, CSAV fit into the "too big to fail" category, concessions were not easily forthcoming. As is typical in these instances, future commitments are always a problem and one of the largest issues to be dealt with, in this instance, were the newbuildings on order and the related financing, which was 90% undrawn at the time. The banks were loathe to fund and the shipyards (Korean, Chinese and Japanese) unwilling to agree to outright cancellations or price reductions.

As arranger and agent of the 3 largest pools of banks (including 7 banks plus 3

ECAs: Kexim, KEIC and China Exim with total commitments of over USD 1bn), BNP Paribas has played a lead role in ZIM's restructuring. These facilities were very difficult to maintain during the restructuring period because only a minor part had been drawn at the time of the default, and there was a need for both a credible restructuring plan and a secured structure to convince banks to keep their commitment to finance ZIM in the future.

In terms of shared risk and give-backs to deal with the "to be delivered" vessels, we understand that the shipyards consented to significant deferrals, vendor financing and deposit transfers. The export

credit agencies acted commercially, looking for market terms. The 60% to 70% backing was available but collateral was a crucial issue. Reluctant to sell the loans and incur losses, the banks were willing to give long grace periods and waivers. And, finally, the charters were modified to provide for lower hire, with the form of payback varying among equity/debt, extensions, and market upside. The law firm of Allen & Overy LLP also played a key role in the restructuring. Figure 2 shows how the funding gap was closed.

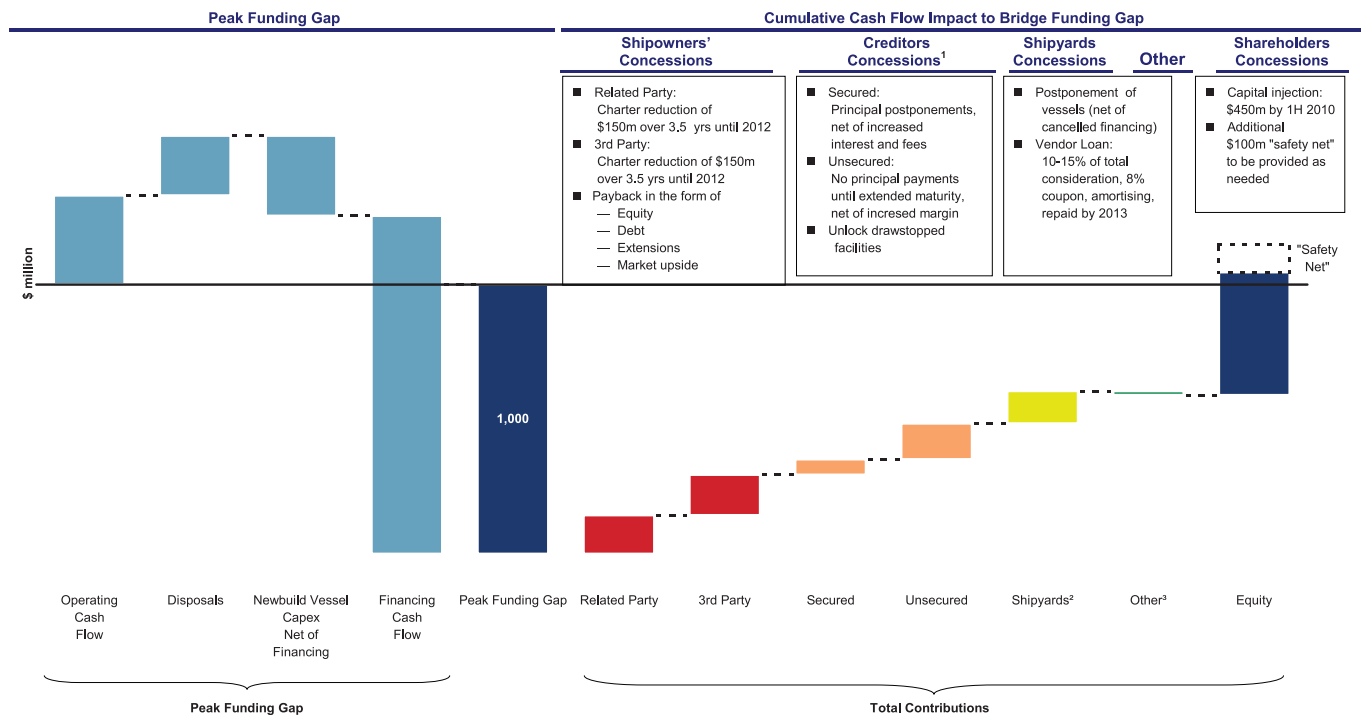
The solution was a testament to leadership, transparency and the realization that cooperation rather than self-interest are how things get done.

## GERMANY TO THE RESCUE

While the same market forces were at work, the situation in the Southern Hemisphere was somewhat different. CSAV, headquartered in Valparaiso, Chile, is the 13th largest liner company in the world with sales of over \$5 billion and 100 vessels under employment in 2008. Peculiar to the company is that it chose an asset light business model, with the majority of its fleet not owned, but chartered in from shipowners mainly in Germany.

With freight tariffs and volumes collapsing, CSAV was burning cash on its costly chartered-in fleet and would soon enter difficult financial straits. No longer able to support the

## Overview of ZIM Integrated Shipping Restructuring Snapshot of Restructuring Plan



<sup>1</sup> Secured debt includes newbuild vessels.

<sup>2</sup> Savings from postponement of vessels net of cancelled financing, principal & interest savings, and negative operating cashflow impact due to increased charter costs.

<sup>3</sup> Mainly advisory fees.

FIGURE 2

charter rates, which were fixed for mid to long-term, CSAV understood that any solution to its problems would need to incorporate the shipowners from whom it chartered its vessels.

In March, CSAV appointed HSH Corporate Finance as its exclusive financial advisor for the restructuring of the company's obligations. The immediate goals were to get transparency on the business plan, determine the resulting liquidity requirements and structure a possible solution. Having completed its analysis in early April, HSH held its first meeting in Hamburg with the owners and financing banks. At that meeting, a stand-still agreement was negotiated which allowed CSAV to reduce its charter rates temporarily, while a solution was being negotiated.

The time frame for a more permanent solution was tight as it was contingent upon a previously committed capital increase of \$130 million from

the existing shareholders, who were unwilling to go forward without a commitment from the shipowners. An agreement to improve the equity base of the company was reached at the last minute and consisted of the following:

- Shareholders would provide fresh money by way of two equity increases, with a minimum to be raised of \$350 million.
- Shipowners agreed to reduce charter rates by an average of 36% for 24 months commencing in April 2009, which amounts would be converted into equity at a pre-agreed share price after completion of the two shareholder capital increases. This represents about \$360 million of the capital increase
- A minimum of \$710 million was to be raised.

Both of the shareholder equity raises were a complete success with \$145 million raised in July and a further \$270 million in December. Both increases were 100% subscribed. The third increase, the debt for equity

swap of the charter rate reduction into shares of CSAV is currently in process.

But it was not only the shipowners and shareowners that contributed. With the cooperation of the shipyard and BNP Paribas, its lender on the newbuilding facility, CSAV was able to significantly alter its newbuilding program to fit its new strategy. The order for four 12,600 TEU was converted into an order for five 8,000 TEU vessels with high reefer capacity. Critical to the agreement to change this order was the restructuring and transfer of the original financing to the new vessels, which was managed by BNP Paribas as agent for the banks.

In retrospect, HSH attributed the success of the restructuring to the following key factors:

- A strong management team, that was willing to give transparency to its stakeholders about its actual situation and plans to overcome the challenges it faced

- Shareholders that not only supported the deal with fresh money but accepted the resulting dilution.
- A strong main shareholder that lead the way for other shareholders to follow, and assisted in the negotiations with the other stakeholders
- Access to the capital markets
- Shipowners which showed goodwill and solidarity with an important client and which acted in unity
- Financing banks that were able to facilitate shipowners to make their contribution.

Like all deals, only time will tell if these restructurings will be successful as much is dependent on an economic recovery. However, both ZIM and CSAV have strengthened their balance sheets by restructuring their obligations while improving their liquidity. Each stakeholder has shared in the pain and will likewise be rewarded when the market turns. In the interim, the ships are working and the banks are being paid. For the moment that may be as good as it gets.



## Selected 2009 Restructurings

Company	Advisors	Banks	Comments	Date
Euroseas Ltd			Reduced dividend to \$0.05 from \$0.10 to preserve cash for future investments.	Nov-09
Seanergy Maritime			Received waiver extension on its LTV covenant through 12/10.	Nov-09
DryShips		Deutsche Schiffsbank	Received waivers on 2 facilities of \$117.5M. Waiver process now complete and x-default resolved. Normal classification of LTD resumes.	Nov-09
TBS International			Although in compliance with waivers, GAAP requires LTD to be re-classified as current. Exploring ways of re-structuring facilities	Nov-09
Top Ships			In breach of additional covenants not previously waived. Seeking waivers or other solutions.	Nov-09
Zim Integrated Shipping Services	Goldman Sachs & Freshfields Bruckhaus Deringer		\$450M equity contribution from parent, Israel Corp. plus \$100M safety net. In addition, ~\$500M credit line from 3 syndicates to finance NB includes favorable repayment terms plus up to 3 years grace.	Nov-09
DryShips		Commerzbank, West LB	Agreed waiver terms for \$70M of outstanding debt. Left with 2 facilities with aggregate debt of \$117.5M to be finalized.	Nov-09