

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

“IN ADMIRALTY”

BUNKERS INTERNATIONAL CORPORATION,

Plaintiff,

and

CASE NO. 3:10-cv-315-J-32TEM

ENJET, LLC,

Intervening Plaintiff,

vs.

M/V ANASAZI, its engines, tackle and
apparel, *et al.*,

Defendants and Garnishees.

**ORDER GRANTING, IN PART, SUBSTITUTE CUSTODIAN’S MOTION FOR
INTERIM PAYMENT OF EXPENSES IN *CUSTODIA LEGIS* FOR THE VESSEL M/V
ANASAZI**

This matter is before the Court on the substitute custodian, National Maritime Services, Inc.’s, motion for interim payment of custodial expenses (Doc. #101, Motion). The Motion was filed on May 11, 2010; therefore, any response in opposition would have been due on or before May 25, 2010. See Fed. R. Civ. P. 6; M.D. FLA. LOC. R. 3.01(b). To date, however, no response(s) in opposition have been filed. Consequently, the Court shall consider the Motion as unopposed. For the reasons stated herein, the Motion shall be granted in part.

On April 15, 2010, pursuant to Local Admiralty Rule 7.05(k)(3), the Court entered an Order appointing National Maritime Services, Inc. as the substitute custodian for the vessel M/V ANASAZI (Doc. #12). Although said Rule provision refers to the United

States Marshals Service, by the Court's Order appointing National Maritime Services, Inc. as the substitute custodian (Doc. #12) it stands in the shoes of the United States Marshals Service; thus, the Rule is applicable to the substitute custodian's requested monies.

On May 6, 2010, the M/V ANASAZI was sold at a United States Marshals' sale for \$1,200,000 (see Doc. #98, Confirmation of Sale). No objections to the sale were timely filed, the sale was confirmed, and the full purchase price is presently in the custody of the Clerk of Court. The Court finds the services provided by National Maritime Services, Inc. were for the safekeeping and preservation of the M/V ANASAZI to the benefit of all creditors.

Expenses in *custodia legis* are generally entitled to priority payment. More particularly, a person or entity that furnishes goods or services to a vessel after it has been arrested does not acquire a maritime lien against the vessel; however, a district court sitting in admiralty has inherent equitable power to give priority to such claims. *New York Dock v. The Poznan*, 274 U.S. 117, 122 (1927). Additionally, interim payments for custodial expenses have been approved by this Court in the past. See *Motor Services Hugo Stamp v. M/V Regal Empress*, Case No.: 8:03-cv-703-MSS (M.D. Fla. Apr. 17, 2003) (Doc. #236).

In this instance, National Maritime Services, Inc. seeks an interim payment of the expenses in *custodia legis* for the M/V ANASAZI in the amount of \$250,000 (Doc. #101 at 2-3). National Maritime Services, Inc. maintains that said amount represents 20% less than the outstanding amount it is owed in order to cover any necessary adjustments prior to final payment (Doc. #101 at 3). On June 3, 2010, however,

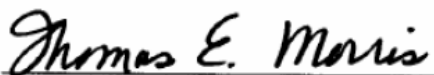
National Maritime Services, Inc., filed a Notice of Filing Final Invoice for Custodial Expenses (Doc. #116). Said Notice indicates the final amount due and owing for the expenses in *custodia legis* for the M/V ANASAZI is \$267,796.18. A 20% retention of this amount to cover any necessary adjustments would equal an interim payment of \$214,236.94.

Based on the foregoing, it is hereby **ORDERED**:

1. Substitute custodian, National Maritime Services, Inc.'s, motion for interim payment of expenses in *custodia legis* for the M/V ANASAZI (Doc. #101) is **GRANTED in part**.
2. The Clerk of Court shall issue an interim payment in the amount of \$214,236.94 to National Maritime Services, Inc.
3. Entry of this Order renders **MOOT** National Maritime Services pending motion to shorten the time period to respond to the motion for interim payment of expenses in *custodia legis* for the M/V ANASAZI (Doc. #103).

DONE AND ORDERED at Jacksonville, Florida this 9th day of June, 2010.

Copies to all counsel of record



THOMAS E. MORRIS
United States Magistrate Judge