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INTERACTION BETWEEN ADMIRALTY AND BANKRUPTCY LAW: EFFECTS OF GLOBALIZATION AND RECURRENT TENSIONS

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*1340 I. Introduction

Bankruptcy cases increasingly have international connections. In the realm of commercial bankruptcy cases, it is the rare case in which a commercial debtor's business does not have some international aspect. In some cases, the debtor has business operations in both the United States and abroad. In other cases, the debtor has manufacturing facilities located overseas and operations headquartered in the United States. In still other cases, the debtor may acquire raw materials or finished goods from suppliers located abroad. Cross-border lending has also become common.

In light of the trend toward globalization in commerce and finance, it is not surprising that maritime issues are increasingly implicated in bankruptcy cases. Unlike bankruptcy law, which can vary dramatically from nation to nation based upon the unique domestic social values attached to financial matters, given its origins ***1341** and purpose, maritime law is inherently international in nature.[1] In addition to the obvious tension between admiralty and bankruptcy law, when a debtor in the maritime industry seeks bankruptcy protection, there are increasingly frequent tensions in the nonmaritime bankruptcies, when maritime creditors seek to exercise their admiralty law rights in bankruptcy court. For example: a retail debtor may have goods in containers aboard ships at sea at the time the case is filed; a construction debtor may utilize the services of a crane mounted on a barge or stevedoring services to offload its equipment in a foreign port; or an oil and gas service debtor may use the services of a marine contractor or ship architect to convert a trawler to a seismic research vessel or may use barges to transport oil, gas, and other petrochemi-cals.

The impact of bankruptcy law on the maritime industry, and the special admiralty doctrines by which that industry has historically dealt with debtors and creditors, has led to recurrent tensions.[2] This Article will examine manifestations of some of these tensions since the 1985 publication of The Tulane Admiralty Law Institute Symposium on Admiralty Interface: Bankruptcy v. Maritime Rights. As shown below, while there have been some key developments, many of the questions from 1985 remain unanswered today.

II. An Effect of Globalization on Bankruptcy

Before looking at the recurrent tensions between bankruptcy and maritime law, one must consider the important current effects of globalization on bankruptcy in general. The field of international insolvency, also referred to as cross-border insolvency or transnational insolvency, has experienced significant interest from academics,[3] ***1342** international organizations,[4] courts,[5] and legislatures[6] around the world in the past few decades.

A. UNCITRAL Model Law

One result from the heightened effect of globalization on bankruptcy law in the United States is the enactment of the United Nations Commission on International Trade Law Model Law on Cross-Border Insolvency into Chapter 15 of the Bankruptcy Code.[7]

Maritime practitioners are familiar with international organizations that attempt to compile single, cohesive bodies of law or rules that can be implemented on an international scale. One well-known international body is the United Nations Commission on International Trade Law (UNCITRAL).

UNCITRAL has attempted to create a body of international bankruptcy law to accommodate cases that span multiple jurisdictions. It developed the Model Law on Cross-Border Insolvency (Model Law), promulgated in 1997.[8] A concise history of the draft follows:

> An intergovernmental Working Group negotiated the Model Law between 1995 and 1997 over four two-week sessions. The Working ***1343** Group consisted of the thirty-six Member States of the Commission, together with interested non-Member States. Relevant international organizations, both inter-governmental [sic] and nongovernmental, also participated, such as the Hague Conference on Private International Law, the European Insolvency Practitioners Association (EIPA), Instituto Iberoamericano de Derecho Internacional Económico, INSOL International, International Bar Association (IBA), and the International Chamber of Commerce. Two weeks of final negotiations followed the deliberations of the Working Group

> during the thirtieth session of UNCITRAL (Vienna, Austria, 12-30 May 1997). The Model Law was adopted by consensus on May 30, 1997. [9]

The Model Law "does not adopt substantive bankruptcy rules, but rather, provides a system of cooperation among the courts having jurisdiction over aspects of the assets and affairs of a multinational enterprise in financial distress." [10]

B. Adoption of the Model Law as Chapter 15 of the Bankruptcy Code and How It Works

The United States incorporated the Model Law in the amendments to the Bankruptcy Code effective in October 2005. [11] The Model Law was enacted as part of the Bankruptcy Abuse Protection and Consumer Protection Act of 2005 as the new Chapter 15. [12] The Chapter is entitled "Ancillary and Other Cross-Border Cases." [13] It applies to the bankruptcy of an American multinational corporation or a foreign multinational corporation with assets or operations in the ***1344** United States. [14] The new chapter has been viewed as primarily procedural in nature and, as applied to foreign bankruptcies and trustees, not mandatory. [15]

Chapter 15 serves two primary purposes: (1) it is the vehicle by which a foreign representative in a foreign insolvency proceeding enlists the help of the United States bankruptcy court to protect or administer assets within the United States, and (2) it is the regulatory authority for a representative of a United States bankruptcy case to act in a foreign country.

"The Model Law makes universalism the foundation of the United States' international bankruptcy policy." [16] "Because of the UNCITRAL source for chapter 15, the U.S. interpretation must be coordinated with the interpretation given by other countries that have adopted it as internal law to promote a uniform and coordinated legal regime for cross-border insolvency cases." [17]

Section 1501(a) specifically lists the five objectives of Chapter 15: (1) cooperation between U.S. courts and foreign courts; (2) "greater legal certainty for trade and investment;" (3) "fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;" (4) "protection and maximization of the value of the debtor's assets;" and (5) "facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employ-ment." [18]

A Chapter 15 case is commenced by an application to the bankruptcy court by a foreign representative for "recognition" of a foreign proceeding. [19] A foreign representative must make a formal request. [20] Absent a specific request for relief, there is no automatic ***1345** stay or other relief that results from the filing of the Chapter 15 petition. The petitioner may couple the petition for recognition with a request for injunctive relief during the "gap period" between the filing of the petition and the court's ruling on the petition, pursuant to § 1519. [21] Upon a showing that relief is "urgently needed to protect the assets of the debtor or the interests of the creditors," the bankruptcy court may grant interim relief including: (1) staying any execution against the debtor's assets so long as such action may be stayed under § 362 (notice that this stay is limited to "execution" actions and does not apply to litigation to liquidate claims; however, it may be possible to obtain a broader stay under § 1519's catchall provision); (2) entrusting the "administration" of the debtor's property, located within the territorial jurisdiction of the United States, to the foreign representative or another person appointed by the court; (3) suspending third parties' right to transfer, encumber, or dispose of the debtor's property; or (4) granting any additional relief that may be available to a "trustee," with a few exceptions. [22]

Chapter 15 focuses on the concept of a "foreign main proceeding." [23] A "foreign main proceeding" is "a foreign proceeding pending in the country where the debtor has the center of its main interests." [24] It is contemplated that a debtor's center of main interests will, in most instances, be its place of incorporation, unless contrary proof is provided. [25] The recognition of a foreign main proceeding is a key event in a Chapter 15 bankruptcy because it may conclusively ***1346** decide the governing bankruptcy law. [26] If the debtor obtains recognition of a foreign main proceeding, then the bankruptcy law of its home country will likely govern the entire case. [27] Phrased in terms familiar to maritime lawyers, the "effect would be that the bankruptcy law of the debtor's flag would apply to all creditors and assets regardless of their location." [28] One exception to the law of the flag concept may be that disputes that present a bona fide question concerning property ownership do not require deference to a foreign proceeding. [29] U.S. bankruptcy courts should apply local law to resolve property disputes because "[p]roperty interests have an independent legal source, antecedent to the distributive rules of bankruptcy administration." [30]

The petition under Chapter 15 seeking recognition of a foreign main proceeding requires a showing that the granting of relief would not violate U.S. public policy. [31] Relevant evidence would include an explanation of the law that is applicable to the foreign main proceeding and analysis demonstrating that substantive and procedural protections will combine to treat U.S. creditors' claims fairly in the foreign main proceeding. [32]

***1347** Unlike relief during the "gap period," the relief available to the foreign representative that applies upon the recognition of a foreign main proceeding does not require satisfaction of the standards for the issuance of an injunction. The relief upon recognition includes: (1) the automatic stay provisions enjoining actions against the debtor or its property in respect of prepetition claims and the adequate protection provisions protecting creditors' interest in collateral securing their claims apply with respect to the debtor and its property; (2) the bankruptcy code sections that apply with respect to transfers of an interest in the debtor's property including the use and sale of property outside of the ordinary course of business, avoidance of postpetition transfers, and the extent to which security interests attach to transferred property; and (3) the foreign representative may operate the debtor's business. [33]

Accordingly, without any showing beyond that which is required for the recognition of a foreign representative and foreign main proceeding, the petitioner is entitled to the foregoing relief as long as such relief would not violate U.S. public policy. For example, if the estate of a debtor in a foreign main proceeding has assets within the territorial jurisdiction of the United States, the foreign representative will now have a statutory procedure to obtain control over and authority to sell the assets and enforce a stay with respect to those assets through an ancillary proceeding under Chapter 15. Likewise, a debtor in a foreign main proceeding in the United States will have the ability to sell assets, including vessels, which are located outside the territorial jurisdiction of the United States. [34] This should provide some assistance to debtors in U.S. bankruptcy proceedings in protecting their assets abroad, at least in countries that adopted the Model Law. [35]

***1348** In the past, seemingly foreign debtors have used the U.S. bankruptcy law by filing their insolvency proceedings in bankruptcy courts of the United States. For example, in the case of In re Global Ocean Carriers Ltd., the bankruptcy filing was attacked on the grounds that the debtor did not have the requisite jurisdictional contacts with the United States and, in particular, with the state of Delaware, where the case was filed. [36] The court upheld the filing, finding that the existence of the debtor's bank accounts, without more, was sufficient to permit the bankruptcy court to exercise jurisdiction over the debtor, even though the funds in those accounts were not significant compared with the assets and liabilities of the debtor. [37] It remains to be seen whether the adoption of Chapter 15 will resolve or exacerbate the tensions between admiralty and bankruptcy law.

C. Deployment of Chapter 15 in Cases Involving Maritime Assets

Chapter 15 has already been deployed with respect to foreign main proceedings outside of the United States involving the assets of maritime debtors located in the United States. [38] For example, in the case of Britannia Bulk PLC (Brit Bulk), on November 17, 2008, the British joint administrator of Brit Bulk (Administrator) filed a Chapter 15 petition in the United States Bankruptcy

Court for the Southern District of New York with respect to the insolvency proceedings underway for the company and its affiliates in England. [39]

Brit Bulk described itself as an international provider of dry bulk shipping and maritime logistics services with a focus on transporting ***1349** dry bulk commodities in and out of the Baltic region. [40] In its Chapter 15 filings, the Administrator declared England as the "center of main interests" and sought, among other things, to obtain jurisdiction over Supplemental Admiralty Rule B attachments of wire transfers passing through New York intermediary clearinghouse banks on the grounds that these attachments "would cause injury or detriment to the creditors as a whole and would prevent the orderly administration and integrity of . . . insolvency proceedings in England." [41] The assets of the debtor identified to be in the United States in the pleadings were described as "cash, funds, escrow funds, credits, debts, and accounts." [42] The Administrator pointed out that "all or substantially all of the income payable under forward contracts entered into by Britannia or its subsidiaries passes through the U.S. financial system." [43] The Administrator also pointed out that "certain counterparties to Britannia's freight forwarding contracts have filed over 14 actions against Britannia or its affiliates seeking attachment and garnishment over the U.S. assets under Rule B of the Supplemental Rules of Certain Admiralty and Maritime Claims." [44] The attachment of Brit Bulk's funds was understandably interfering with the Administrator's administration of the case in England.

At the request of the Administrator, the bankruptcy court promptly entered a temporary restraining order on the day the Chapter 15 petition was filed and a few days later, on November 20, 2008, entered a subsequent order extending the temporary injunction pending a final hearing on whether to recognize Brit Bulk's English insolvency proceeding as a "foreign main proceeding." [45] Because the filing of a Chapter 15 petition does not give rise to an automatic stay, as is available under other sections of the Bankruptcy Code, the ***1350** Administrator had prudently sought injunctive relief pending a final determination of its petition. The bankruptcy court, concerned about the rights of creditors, modified the relief sought by the Administrator in making the initial injunction temporary and allowing creditors an opportunity to contest the injunctive relief sought to protect Brit Bulk's insolvency proceedings. The bankruptcy court docket reflects that despite the effect of the injunctions on at least fourteen pending attachment cases, no opposition was raised.

The apparently uncontested evidentiary hearing on the Chapter 15 petition was held on December 10, 2008, and an order recognizing the English proceeding as a foreign main proceeding entitled to relief under Chapter 15 was entered by the court that same day. Rather than simply invoke the protections set out in Chapter 15 once a foreign main proceeding has been recognized by the bankruptcy court, the order provides detailed instruction with respect to its scope and includes:
(1) staying execution against the Foreign Debtor's assets;

(2) taking or continuing any act to obtain possession of, or exercise control over, the Foreign Representatives (with respect to the Foreign Debtor), the Foreign Debtor or any of its property;

(3) taking or continuing any act to create, perfect or enforce a lien or other security interest, set-off or other claim against the Foreign Representatives (with respect to the Foreign Debtor), the Foreign Debtor or any of its property;

(4) transferring, relinquishing or disposing of any property of the Foreign Debtor to any person or entity other than the Foreign Representatives;

(5) commencing or continuing any proceedings, including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, appeal, proceeding or process whatsoever (collectively, "Proceedings") against the . . . Foreign Debtor or any of its property and seeking discovery of any nature against the Foreign Debtor;

(6) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order or arbitration award and commencing or continuing any act or any action or other Proceedings to create, perfect or enforce any lien, set-off or other claim against the Foreign Representatives (with respect to the Foreign Debtor), the Foreign Debtor or any of its property;

(7) invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state or local law or regulation requiring the Foreign Representatives (with respect to the Foreign Debtor) or the Foreign Debtor to establish or post security in the form of a ***1351** bond, letter of credit or otherwise as a condition of prosecuting or defending any Proceedings, and such statute, rule or requirement will be rendered null and void for the purposes of such Proceedings;

(8) declaring or considering the filing of the Petition and this chapter 15 case a default or event of default under any agreement, contract or arrangement; and

(9) managing, exercising control over, or possessing the Foreign Debtor's property, except as expressly authorized by the Foreign Representatives. [46]

The Brit Bulk case illustrates the dramatic ability of Chapter 15 to terminate Rule B and other prejudgment collection and garnishment efforts of maritime creditors throughout the territory of the United States in one quick proceeding. Insolvent maritime companies have a new effective tool to protect assets globally and provide a safe harbor from their aggressive maritime creditors.

International insolvency law, including Chapter 15, continues to develop to facilitate cooperation among international bankruptcy courts in our increasingly financially interdependent global economy. The initial deployment of Chapter 15 with maritime assets does not appear to have encountered any contest.

Potential challenges include both technical compliance issues and substantive issues, such as: whether the petitioner has met the requirement of providing a certified order of the foreign tribunal establishing the existence of the alleged foreign proceeding, whether the representative has established that the foreign proceeding is pending in the country where the debtor has the "center of its main interests," or whether the petitioner has established how the interests of U.S. creditors will be protected. [47]

It remains to be seen how the law will develop as applied to maritime claims as admiralty practitioners begin to understand and test its limitations. This Article provides a mere starting point and general introduction for maritime lawyers interested in getting involved in international bankruptcy issues since the adoption of Chapter 15.

*1352 III. Guiding Principles of Bankruptcy Law Compared and Contrasted with Related Admiralty Law Principles

Maritime lawyers have long believed that the bankruptcy and maritime laws, despite their common origins in antiquity, are opposed in their purpose and application. [48] Bankruptcy lawyers have tended to avoid or ignore maritime law. [49] They are often shocked at the efficiency of the Rule B and Rule C remedies available to maritime creditors. Indeed, the primary purposes of these two legal regimes often appear to be at cross-purpose. "[A] primary purpose of maritime law is to support a strong merchant marine by favoring creditors." [50] In other words, maritime law is creditor-oriented. On the other hand, a primary purpose of the bankruptcy law is to give debtors "a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." [51]

Although the scope of admiralty jurisdiction over contracts may be in flux, the freedom and sanctity of the contract is sacred in maritime law. [52] Bankruptcy law turns contracts on their heads as it allows debtors to reject contracts or avoid contractual transactions. [53] Maritime liens are secret and are prioritized in the inverse order of attachment, last-in-time/first-in-right, while bankruptcy law is more familiar with land liens, which must be notorious to bind the world and are prioritized in order of their perfection, first-in-time/first-in-right. [54] While the Federal Rules of Civil Procedure have in large part been adopted, with some minor changes, to bankruptcy practice, the ***1353** Supplemental Admiralty Rules have not. The increasing globalization of commerce and finance has increasingly implicated maritime issues in bankruptcy cases and has also intensified the historic recurrent tensions.

A. Important Purposes of Bankruptcy

There are important public policy considerations that make the Bankruptcy Code important to society as a whole. One major goal of the Bankruptcy Code is to strive toward fairness between a large number of participants, including creditors (both secured and unsecured), employees of the debtor, shareholders of the debtor, the public at large, and the debtor.

Modern capitalist society needs entrepreneurs to innovate and create new businesses, new products, and new jobs. This will not happen if entrepreneurs must place their past, present, and future earnings at risk. When dealing with a corporation, limited partnership, limited liability company, or other limited liability entities, creditors understand that they will only be paid if the business succeeds. If creditors are not satisfied with this arrangement, they have choices: they can refuse to extend credit, they can do business only with sole proprietorships or require personal guarantees, or they can obtain liens on their counterpart's unencumbered collateral. Deployment of any of these choices necessarily limits the creditor's opportunities to do business.

When businesses fail and become insolvent, society often has a strong interest in finding a way to let the business continue. Historic problems with the steel, coal, and railroad industries are good examples. Bethlehem Steel was at one time one of the largest shipbuilding companies in the world and one of the most powerful symbols of American industrial manufacturing leadership. Bethlehem Steel "failed": they were no longer paying their debts as they became due. Liabilities exceeded assets and the company had a negative net worth. The company listed inexpensive steel imports and numerous high pension payments as causes of its bankruptcy. [55] Would we better off if Bethlehem Steel disappeared from the face of the earth? Tens of thousands of people would be out of work. The nation would lose a ***1354** major source of steel, an important component of national industrial production. Finally, recovery by creditors would be limited.

If an insolvent company is "liquidated" when liabilities exceed assets, secured creditors probably lose money while unsecured creditors have nothing. If the company has a workable business plan, however, continuing the business may mean the generation of profits to pay secured credit as it becomes due, pay unsecured creditors, and create jobs for employees, a tax base for the government, and a steel supply for industry.

The shareholders often change in a "reorganized" corporation. When liabilities exceed assets, there is no equity for the shareholders. Employees may become partial owners in exchange for lost pensions or the agreement to continue working. Unsecured creditors may receive stock instead of cash repayment of loans. Secured creditors sometimes become the owners of companies by agreeing not to foreclose on machinery and other assets.

This may become confusing because the former shareholders and managers of the failed business may continue as players. This can create the perception that the business continues unchanged while general unsecured creditors remain unpaid. The former shareholders and managers, however, may be mere employees in the reorganized company. The business may have failed due to uncontrollable market conditions and the former managers may still be the best managers to work for the new employee or creditor owners. The former shareholder owners of the company must contribute cash or other "new value" to the reorganized venture in exchange for stock in the new reorganized company. They may also receive stock over time based on the success of the venture or services provided over time.

In general terms, the secured and unsecured creditors of the failed business become the owners and can make whatever deal they deem advisable with the former owners of the failed business. Generally, the old equity owners must lose their interest in the company unless they contribute genuine new value or the creditors are paid in full. This is an application of the bankruptcy concept known as the "absolute priority" rule. [56]

The Bankruptcy Code is said to have essentially three purposes. Those purposes are not mutually exclusive and may overlap. The first purpose is to allow the debtor a "fresh start." [57] This purpose is ***1355** ordinarily associated with individuals in Chapter 7. It is accomplished by the liquidation of all of the debtor's nonexempt assets and the distribution of the proceeds to the creditors. The debtor gets a discharge of his debts in return for giving up his nonexempt assets.

A second purpose is to affect an "equitable distribution" of the debtor's asset among the creditors. An equitable distribution requires that creditors of a higher priority be paid before creditors of a lower priority and those creditors of equal rank share pro rata. This equitable distribution purpose is more closely associated with a liquidation, be it a liquidation of an individual or business debtor, but it is also achieved in a reorganization. The realization of an equitable distribution is aided by the automatic stay which prevents continued collection activity by individual creditors.

The final purpose of the Bankruptcy Code is to allow for the reorganization of debts so as to allow the debtor to remain in possession of its assets. To the extent the debtor is in business, it is allowed to remain operating in order to provide jobs and contribute to the country's productivity. This final purpose is mainly achieved by Chapter 11 reorganization. It is aided by the automatic stay preventing all collection activities while the debtor rehabilitates its business and negotiates a payback with its creditors. To the extent a plan of reorganization is confirmed, all preconfirmation debt, except as retained in the plan, is discharged.

Maritime creditors are often disappointed to find their lien or claim positions adversely affected by the application of bankruptcy provisions. However, by understanding the purpose behind the various bankruptcy provisions, arguments can be advanced that enhance the position of maritime creditors in bankruptcy court.

B. Efficiency of Distribution and Broad In Rem Jurisdiction versus Territoriality

One of the recurring areas of disappointment stems from a dramatic difference of approach to in rem jurisdiction between maritime and bankruptcy doctrine. The Bankruptcy Code provides a broad grant of jurisdiction over the assets of the debtor. To this end, the Code defines "property of the estate" broadly. The estate is comprised generally of all the assets of the debtor "wherever located" and by "whomever held" including the following types of property ***1356** identified in the Bankruptcy Code: (1) all legal or equitable interests of the debtor in property as of the commencement of the case; (2) any interest in property that the debtor or trustee recovers under various sections of the Bankruptcy Code, such as avoidable preference payments, fraudulent transfers, and other recoveries of property; (3) property that comes into the debtor's possession within 180 days after filing for bankruptcy if that property would have been part of the estate had the debtor owned it when the bankruptcy case commenced; (4) proceeds, products, offspring, rents, or profits of or from property of the estate; and (5) other property that the estate acquires after the commencement of the case. [58]

The Bankruptcy Code supports this broad in rem jurisdiction with equitable power over parties before the court to compel certain conduct. For example, the automatic stay and remedies for breach of the stay are used to protect even remote assets.

Maritime jurisdiction, on the other hand, requires the presence of the res within the territorial jurisdiction of the court. Maritime creditors exercise their in rem or quasi in rem remedies against vessels or other assets directly and only in a court that has territorial jurisdiction over those assets.

As discussed above, globalization has influenced bankruptcy law to trend toward the universal view and away from the territorial view and thereby empowers distant insolvency tribunals with tools to protect assets far abroad.

C. Absolute Priority Rule and Notice

The absolute priority rule of bankruptcy law [59] is another area of potential disappointment for maritime creditors. The absolute priority doctrine holds that categories or classes of claimants are prioritized; under the priority system, junior classes, like shareholders, are to be paid only after senior classes, such as unsecured creditors, are paid in full. [60] As a result, Chapter 11 has evolved into a mechanism for ***1357** shifting corporate control. Reorganization is a change of control transaction involving a sale of the debtor's business to its creditors.

This rule along with the standard of fair and equitable treatment of the claims of the prepetition general unsecured creditors recognizes that shareholders bargain for equity returns and accordingly assume the risk of losing their investment in the process. [61] Because unsecured creditors do not bargain for the same returns and do not take on the same risks, they should be paid in full before equity. These bankruptcy concepts are often at odds with the sophisticated maritime system providing for priorities between various creditors and which subordinates nonmaritime creditors even if they have liens. [62]

D. Automatic Stay and Debtor in Possession

Two additional bankruptcy concepts often frustrate maritime creditors: the automatic stay and debtor-in-possession status. Chapter 11 provides numerous benefits to a business that has principals who want to continue to operate and sufficient financial resources to survive the administration of a reorganization case. Two of the most attractive features of a Chapter 11 bankruptcy case are: (1) the principals of the debtor company generally maintain control over the business, under the concept of debtor in possession (DIP); [63] and (2) the company continues to operate utilizing its assets, albeit with some court and creditor oversight. The company who has filed for bankruptcy under Chapter 11 often becomes a DIP. This role as DIP places fiduciary duties on the company, not only to its shareholders, but to the entire creditor class. [64]

Immediately upon the filing of a Voluntary Petition in Bankruptcy, except in Chapter 15, an “Order for Relief” is entered. Once the order for relief is entered, the bankruptcy process begins and the “automatic stay” is in place. The automatic stay ends the “race to the courthouse.” All creditors are forbidden from taking aggressive action against the debtor or otherwise improving their position. General unsecured creditors will not be able to secure the amount owed to them, by judgment or otherwise. The debtor is no longer permitted to simply pay any creditor it wishes.

***1358** Bankruptcy is intended to be an orderly process to liquidate or reorganize the debtor, and this is impossible if creditors are allowed to aggressively pursue the debtor. Fairness between creditors is also an important objective, and the debtor's limited assets should not go to the creditor that is the most aggressive or the creditor that can afford the most attorneys' fees.

These bankruptcy concepts are in sharp contrast to the bold remedies available to the maritime creditor to control the debtor's assets--mechanisms such as arrest and attachment. [65] When a maritime debtor is subjected to maritime creditors, typically the quickest and most aggressive creditors will have an advantage over the other creditors. They might cajole the debtor to pay their claim to obtain the release of assets at a time when the debtor is not in a position financially to make such a payment. The curtailment of creditor lien enforcement by the automatic stay frustrates the maritime creditor who would otherwise be rewarded for swift and vigilant action under maritime law.

The traditional goal of a Chapter 11 case is to “reorganize” a company pursuant to a plan that must be voted on by the creditors affected and approved by the bankruptcy court. Generally, a plan allows for the company to continue its operations after the administration of the company in the bankruptcy case has concluded. The goal of admiralty creditor remedies is simply to get paid. If the creditor's control of the assets is insufficient to compel payment, then the matter proceeds to a sale of the assets. During the admiralty sale process, the assets are generally unavailable to the debtor.

E. Disfavor of Secret Liens versus Inchoate Maritime Liens

The maritime creditors' enforcement of inchoate or secret liens is frequently challenged by bankruptcy lawyers and criticized by bankruptcy courts as being unfair to the interests of unsecured creditors and the debtor. [66] Secret liens arise due to the transient nature of a ship and the impracticality of recording liens while it is on a voyage and out of the jurisdiction in which the supplier of necessaries ***1359** resides. Ever conscious of the mobility of ships and the resulting risk of nonrecovery of maritime claims by creditors, maritime law has also developed prejudgment security procedures suited to the demands of justice and of international seagoing commerce. [67] A global recordation system does not exist where a seaman or vendor can file a lien each time a debt for wages or necessaries occurs. [68] Therefore, a maritime debt that does not have a recorded lien can still exist, be valid, prime other liens, and be unknown to anyone but the holder of the lien and the shipowner. [69]

The inchoate nature of the maritime lien creates a special form of financial complexity for creditors assessing the value of the assets of a maritime debtor in bankruptcy.

IV. Recurrent Tensions Between Admiralty and Bankruptcy

The courts continue to administer maritime assets in a perhaps unspoken compromise, allowing the bankruptcy courts to exercise jurisdiction to distribute all assets (including those under the jurisdiction of a court of admiralty and those outside of the domestic admiralty court's territorial jurisdiction) while preserving the traditional priority of maritime liens, preferred ship mortgages, and land liens. Maritime creditors are well aware that foreclosures on their maritime liens are among the actions that the bankruptcy court can stay. However, the tensions and the questions they invoke still recur.

A. The Status of Recurrent Tension Between Admiralty and Bankruptcy In Rem Jurisdiction: Maritime Issues Can Be Core

The allocation of judicial powers between bankruptcy and admiralty courts continues to remain a controversial issue and a source of tension. [70] No clear bright-line rule exists to determine whether a ***1360** bankruptcy court has jurisdiction over a particular maritime or admiralty issue or dispute. As a result, a tremendous amount of uncertainty surrounds issues that fall in the overlapping purviews of admiralty, bankruptcy, and international law. [71] To begin to understand the nature of this uncertainty, one must look at the source of authority for each court.

Without going into the rich history that has been variously set out elsewhere, Congress has clarified that bankruptcy jurisdiction belongs to the U.S. district courts. [72] The 1984 Amendments to the 1978 Bankruptcy Reform Act established the bankruptcy courts as units of the federal district courts. [73] The district courts can, but are not required to, refer matters over which they exercise jurisdiction to the bankruptcy courts for that district. [74] All district courts have entered directives, through either general orders or local rules, that automatically refer cases or proceedings within the bankruptcy jurisdiction to the bankruptcy court for the district. [75] Essentially, the bankruptcy courts are now designated by district court orders as units of the district courts with jurisdiction derived from the Article III district courts. These referral orders and local rules create a potential jurisdictional problem when bankruptcy cases involve admiralty issues.

Bankruptcy jurisdiction extends to four types of proceedings: (1) cases “under” title 11, that is, the bankruptcy petition; (2) proceedings “arising under title 11”; (3) proceedings “arising in” a bankruptcy case; and (4) proceedings “related to” a bankruptcy case. [76] The first three categories are “core” proceedings in which the ***1361** bankruptcy court has power to hear, decide, and enter orders and judgments. [77] The fourth category, “related to” proceedings, are “noncore” proceedings, which the bankruptcy court can hear, but in which it can only submit proposed findings of fact and conclusions of law to the district court, not issue final orders. [78] A noncore proceeding belongs to “the broader universe of all proceedings that are not core proceedings but are nevertheless ‘related to’ a bankruptcy case.” [79] They therefore “need not necessarily be against the debtor or against the debtor's property" but, rather, need only be such that "the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." [80]

In sum, every proceeding in bankruptcy court, no matter how it is described, constitutes either a core, related noncore, or unrelated proceeding. [81] Thus, the first step in determining the scope of the bankruptcy court's jurisdiction is to determine which of these categories is applicable to a particular claim. Whether claims are considered core, noncore, or unrelated proceedings dictates not only the bankruptcy court's role and powers with respect to a maritime issue, but also the availability of mandatory abstention in deference to other fora such as admiralty courts or arbitration panels and the enforcement of forum selection clauses. [82] If the maritime issues or claims against assets or parties are merely "related to" the debtor's bankruptcy case, abstention and enforcement of the forum selection clause may be appropriate. [83]

It would appear from the bankruptcy statutes that the safeguard for retention of admiralty jurisdiction in the district court is embodied in the provision for withdrawal of a proceeding from the reference by the district court to the bankruptcy court. Indeed, 28 U.S.C. § 157(d) specifically provides:

> ***1362** The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce. [84]

In bankruptcy cases involving the sale of a debtor's vessel, including the distribution of sale proceeds, and the determination of the validity of and ranking of liens, it is apparent that consideration of the Federal Maritime Lien Act and the general maritime law of the United States are required. [85] These laws fall squarely within the category of "laws of the United States regulating organizations or activities affecting interstate commerce." [86] However, district courts rarely withdraw admiralty sales or maritime lien proceedings to the district court sitting in admiralty. [87]

The reason that district courts rarely withdraw the reference for these issues arising in bankruptcy court is that the test for mandatory withdrawal under § 157(d) has been narrowly defined. The courts have recognized that a literal application of § 157(d) could open a broad "escape hatch through which most bankruptcy matters [could] be removed to a district court." [88]

Although bankruptcy courts determine whether a proceeding is core or noncore when deciding whether appropriate jurisdiction may be exercised over a bankruptcy case involving admiralty issues, the courts have used different methods to deal with this problem. [89] For example, if the issue of maritime law is not open and unresolved, there ***1363** is no need to withdraw the matter from the bankruptcy court as required for mandatory withdrawal. [90]

In order to evaluate whether a claim is core, a court usually first looks to the illustrative list of core proceedings found in § 157(b)(2). [91] It must then conduct the appropriate test used in that court or circuit. If the bankruptcy court determines initially that it is presented with a "core proceeding," it has jurisdiction and proceeds. If the matter is a "noncore proceeding," the court must then determine the degree of relatedness to decide whether to exercise its noncore jurisdiction, abstain, or, if the matter is an unrelated proceeding, dismiss for lack of jurisdiction. Unrelated proceedings are those proceedings that center upon substantive nonbankruptcy law issues and have, at best, an attenuated connection with a bankruptcy case and, therefore, should not be heard or determined by the bankruptcy court. [92]

The United States Court of Appeals for the Second Circuit has distinguished a "core proceeding," where a bankruptcy court can make a final judgment, from a "noncore proceeding," where a bankruptcy court can only make a recommended finding to the district Article III judge. [93] Section 157(b)(l) of title 28 vests full judicial power in bankruptcy courts over "core proceedings arising under title 11," or arising in a case under title 11. [94] One example of a core admiralty proceeding dealing with both marine insurance policies and arbitration clauses contained in those policies is found in the Second Circuit case of Asbestosis Claimants v. American Steamship Owners Mutual Protection and Indemnity Ass'n (In re United States Lines, Inc.), where the court held that although insurance policies covering asbestos claims arising from exposures aboard vessels existed before the debtor's bankruptcy filing, "the declaratory proceedings brought by the Trust in this case directly affect the bankruptcy court's core administrative function of asset allocation among creditors, and for that reason they are core." [95]

Among the United States Lines creditors were some twelve thousand employees who filed more than eighteen thousand claims, ***1364** most related to asbestos-caused injuries sustained while working aboard various ships in the debtors' fleet over four decades. Many additional claims were expected to mature in the future. The debtor's trust asserted that several protection and indemnity (P&I) insurance policies issued by four domestic and four foreign mutual insurance clubs covered the claims. Generally, a single club insured the debtors' entire fleet for a particular year, but there were exceptions when certain ships were insured independently of fleet coverage by another club or under a different policy. All of the P&I policies were issued before the debtors petitioned for bankruptcy relief.

The proceeds of the P&I policies were the only funds potentially available to cover the above employees' personal injury claims. At the heart of the dispute was a pay-first provision in each of the P&I policies, by which the insurers' liability was not triggered until the insured paid the claim of the personal injury victim. [96] The deductibles for each accident or occurrence varied among the different policies, ranging from $250 to $100,000.

The trust and an initial group of 106 claimants entered into a stipulation of conditional settlement that was approved by the bankruptcy court. The trust then began an adversarial proceeding in the bankruptcy court, pursuant to the Declaratory Judgment Statute, seeking a declaratory judgment of the parties' respective rights under the various P&I policies. [97] The complaint sought a declaration from the bankruptcy court of the insurance clubs' contractual obligations under the P&I policies in light of the stipulation of conditional settlement that had been approved by the court.

The bankruptcy court held, among other things, that the trust's declaratory judgment action was core, and thus could be tried to binding judgment in the bankruptcy court, and that the bankruptcy court had discretion to deny the motion to compel arbitration filed by ***1365** the four foreign clubs. [98] The district court, exercising appellate jurisdiction, reversed both determinations. [99]

The Second Circuit accepted the appeal on certification from the district court and held that a declaratory judgment action concerning the debtor's rights under a prepetition insurance policy was a core proceeding because it "directly affect[ed] the bankruptcy court's core administrative function of asset allocation among creditors." [100] The court focused its attention on the relationship of the declaratory judgment action to the bankruptcy court's task and found that the suit was "integral to the bankruptcy court's ability" to administer the debtor's estate. [101] The Second Circuit found that the bankruptcy court was the preferable venue in which to handle mass tort actions involving claims against an insolvent debtor, stating that "[t]he need for a centralized proceeding is further augmented by the complex factual scenario, involving multiple claims, policies and insurers." [102]

The Second Circuit also held that a bankruptcy court has the discretion to deny enforcement of an arbitration clause in a contract when the arbitration would conflict with the bankruptcy process. [103] The court held that the dispute was a core proceeding because of "the impact these contracts have on other core bankruptcy functions." [104] It is interesting to note that while the three-judge panel was unanimous in its result--each judge agreeing that the resolution of the dispute was integral to the bankruptcy court's function--all three judges issued opinions explaining a different rationale for coming to that conclusion. One might conclude that the concept of "core proceeding" in bankruptcy is akin to "pornography" in First Amendment cases, in that the court simply knows it when it sees it.

Even outside the tension arising in the maritime/bankruptcy context, courts have reached divergent determinations regarding whether insurance coverage proceedings are within the core jurisdiction of the bankruptcy court. It appears that disputes arising under insurance policies that have been issued postpetition have been ***1366** held to be core proceedings. [105] However, courts have split on the question of whether coverage disputes arising out of prepetition insurance policies are core proceedings. Some courts have held that disputes relating to the debtor's right to insurance coverage under prepetition insurance policies are core proceedings, particularly in cases where insurance coverage represents a substantial portion of the value of the debtor's estate, where the availability of insurance coverage is a vital element of the debtor's contemplated reorganization, or where resolution of the insurance coverage dispute is necessary to preserve the bankruptcy court's ability to administer the debtor's estate. [106] This confusion is undoubtedly due to the lack of clear statutory guidance as to what constitutes a core proceeding.

In another case involving what would appear to amount to noncore bankruptcy court jurisdiction over a distinctly maritime issue (quiet title to a vessel), the Second Circuit found that--although an action to resolve competing claims and ranking of such lien claims with respect to a vessel is distinctively an admiralty proceeding within the exclusive province of the federal district court in the exercise of its exclusive admiralty jurisdiction--by consenting to the bankruptcy court's adjudication of the existence and priority of their liens on the debtor's vessels and participating in that adjudication, maritime lien holders consented to the bankruptcy court's equitable jurisdiction, which transformed the lien priority proceeding into a bankruptcy core proceeding. [107] Therefore, while parties generally cannot create federal subject matter jurisdiction by agreement, parties may waive jurisdictional objections to bankruptcy court core jurisdiction in noncore matters and thereby consent to the exercise of bankruptcy court subject matter jurisdiction. [108] What if the lien holders had not consented to the bankruptcy court's jurisdiction? The Millenium I case will be reviewed in more detail below.

***1367** In a second appeal involving the same debtor, the Second Circuit also found that the bankruptcy court had jurisdiction over a charter party dispute arising from the judicial sale of a vessel as part of the debtor's bankruptcy proceeding. [109] The issue was whether the charter party had been assumed and assigned as part of the bankruptcy court-approved sale of the vessel to which the charter party applied. The court noted that to determine whether litigation concerning a contractual dispute is core, it must assess

(1) whether the contract is antecedent to the reorganization petition; and (2) the degree to which the proceeding is independent of the reorganization. . . . Proceedings can be core by virtue of their nature if either (1) the type of proceeding is unique to or uniquely affected by the bankruptcy proceedings, . . . or (2) the proceedings directly affect a core bankruptcy function. [110]

Because the dispute turned on the terms of the bankruptcy court's sale order, it amounted to no less than a request that the bankruptcy court enforce its order. This was squarely in the court's core jurisdiction. But again, what if the lien holders had not consented to the bankruptcy court's jurisdiction? If the bankruptcy sale was invalid, how could the court have had core jurisdiction? Do the sales of these vessels rest on a tenuous reed?

B. Bankruptcy Courts with Core Jurisdiction Can Enter Final Judgments in Admiralty In Rem Matters--Even When the Vessels Are Outside the Court's Territorial Jurisdiction

A bankruptcy court can have subject matter jurisdiction over maritime claims unless it is a personal injury or wrongful death claim. [111] If the claims are under the district court's maritime jurisdiction, some courts have found that the bankruptcy court has subject matter jurisdiction because it is an adjunct of the district court. [112] Further, the bankruptcy court's jurisdiction may be determined by when the bankruptcy petition was filed.

***1368** As mentioned above, in Universal Oil Ltd. v. Allfirst Bank (In re Millenium Seacarriers Inc.) (Millenium I) the Second Circuit held that a district court's subject matter jurisdiction over all property in a bankruptcy proceeding extends to areas otherwise covered by maritime law even though the case involved complex issues of admiralty and maritime law. [113] Debtor Millenium Seacarriers Inc. (Millenium) was founded in 1998 to hold the stock of various vessel-owning subsidiaries. [114] Millenium raised capital by issuing several series of notes, a majority of which were purchased by Wayland Investment Funds, LLC. On January 15, 2002, Millenium and certain of its subsidiaries (collectively, the debtors) filed voluntary petitions for Chapter 11 relief, and about two weeks later, Wayland filed a motion to lift the automatic stay to allow it to prosecute its mortgages, or in the alternative, to convert the cases to Chapter 7 or to have a Chapter 11 trustee appointed. Eventually, the debtors and Wayland reached an agreement which resulted in the debtors filing a motion to sell Wayland all of its assets, free and clear of liens, claims, and interests, pursuant to a credit bid. [115]

Various maritime lien claimants (the objecting lien holders) objected to the proposed sale, arguing that it should not be approved by the bankruptcy court because it would serve to eliminate their maritime liens. The bankruptcy court overruled the objecting lien holders' objections and approved the sale, but entertained the concept of an expedited adversary proceeding to resolve the status of any alleged maritime liens. An adversary proceeding was filed with the objecting lien holders as plaintiffs and Allfirst Bank and Wayland as defendants. [116]

In the adversary proceeding, Allfirst Bank and Wayland moved for summary judgment, arguing that the ship mortgages were validly executed and duly registered in Liberia and that admiralty law ranked the objecting lien holder's liens at a lower priority than such mortgages. Because the proceeds of the sale were less than the balances due on the mortgages, they sought dismissal of the objecting lien holders' suit. The bankruptcy court granted the motion for ***1369** summary judgment and the objecting lien holders appealed. The United States District Court for the Southern District of New York, in two separate opinions, affirmed the bankruptcy court's decision. Specifically, the district court held, among other things, that (1) the bankruptcy court had subject matter jurisdiction over the adversary proceeding, even following the auction of the debtors' assets, and (2) Allfirst Bank's ship mortgages were superior to the liens of the objecting lien holders. [117]

The Second Circuit initially discussed the jurisdictional conflicts between admiralty and bankruptcy law. [118] "On the one hand, Congress has granted the district courts expansive bankruptcy jurisdiction to adjudicate claims against a debtor's estate." [119] "On the other hand, while it has long been established that federal courts do not have exclusive jurisdiction in all admiralty matters, certain classes of cases are cognizable only in admiralty." [120] The court acknowledged that in cases involving maritime assets that have been seized prebankruptcy petition, the conflict was often resolved utilizing the doctrines of comity and custodia legis in favor of the court that first obtained jurisdiction over an asset. [121] The court also noted that the notion that these doctrines exist "supports the proposition that bankruptcy courts, as a historical matter, have been considered competent to adjudicate specific lienors' maritime liens." [122] Despite bankruptcy courts having adjudicated the validity and priority of maritime liens asserted against debtors' maritime assets for nearly a century, the court observed that the "question of whether a bankruptcy court may enforce and foreclose maritime liens over a lienor's objections has not been conclusively settled." [123]

The objecting lien holders in the Millennium case objected to the bankruptcy court's handling and administration of the case. [124] They found offense in the procedure whereby the court had ordered the debtor to file an adversary proceeding on behalf of the objecting ***1370** lienors, naming them as plaintiffs in the action. [125] While the lienors objected to being named as plaintiffs in an action they didn't bring, they declined the court's offer to remove them from the action. [126]

On appeal, the Second Circuit expressed skepticism concerning "this unorthodox procedure" of permitting the debtors to file an adversary proceeding on the lienors' behalf without the lienors' consent. [127] However, the court determined that the lienors waived their objections by declining to withdraw from the proceeding. [128]

Turning to the question of subject matter jurisdiction, the Second Circuit noted that "an in rem suit against a vessel to quiet title by expunging its liens is 'distinctively an admiralty proceeding, and is hence within the exclusive province of the federal courts' sitting in admiralty." [129] In such suits, "jurisdiction does not attach until the vessel is arrested within the jurisdiction." [130] However, the appeals court also determined that admiralty law allows for individual lien claims to be expunged when lienors themselves choose to submit their claims to the equitable jurisdiction of another court.

In the case at hand, the lienors submitted their maritime lien claims to the bankruptcy court for adjudication in the adversary proceeding. "[T]hey submitted themselves to the bankruptcy court's equitable jurisdiction, thereby invoking one of admiralty's exceptions to the exclusivity of the in rem proceeding," the court stated; "we simply need not address the murky question of whether the bankruptcy court improperly wielded the admiralty power that is 'within the exclusive province of the federal courts."' [131]

Noting that the adversary proceeding was a core proceeding as a result of the voluntary submission to the bankruptcy court's jurisdiction, the appeals court concluded that the bankruptcy court "acted well within its core jurisdiction when it conducted the adversary proceeding pursuant to the Sale Order." [132] In addition, the appeals court concluded that the maritime character of the assets did not limit the bankruptcy court's jurisdiction because the objecting lien holders ***1371** "submitted their maritime lien claims to the bankruptcy court for adjudication in the adversary proceedings, [and thus] they submitted themselves to the bankruptcy court's equitable jurisdiction." [133] Finally, noting that "[t]hose who purchase maritime assets from a debtor's estate under the auspices of a bankruptcy proceeding take a calculated commercial risk that they have not received clean title," the appeals court concluded that the objecting lien holders "are not merely enjoined from liquidating their maritime liens in the admiralty courts of foreign jurisdictions; for the reason discussed, we hold that their liens have been extinguished as a matter of admiralty law." [134] Therefore, the appeals court affirmed the district court's decision because "there was no genuine issue of material fact as to the priority of [Allfirst Bank's] ship mortgages over [the objecting lien holders'] claims to maritime liens of tort and necessaries." [135].

In Millenium I, the Second Circuit held that a bankruptcy court could order the sale of marine vessels "free and clear of liens," even though the vessels were not arrested within the court's jurisdiction, because the objecting lienors litigated their claims before the bankruptcy court. [136] As a practical matter, notwithstanding the Second Circuit's decision, does the fiction of worldwide territorial jurisdiction purportedly provided by the Bankruptcy Code in its definition of property of the estate, 11 U.S.C. § 541, provide a sufficient level of decisiveness for purchasers of remote maritime assets in U.S. bankruptcy cases? [137] The court suggested that the scope of a bankruptcy court sale order free and clear of liens and claims may not be as extensive as one from the court sitting in admiralty. [138]

Maritime debtors and their secured lenders will continue to weigh the efficiency of bankruptcy sales of all the debtors' vessels wherever located in one proceeding against the chance that some maritime liens may remain unadjudicated. Maritime lien claimants, particularly those outside the country, have the hard choice of participating in the ***1372** bankruptcy and thereby subjecting their claim to jurisdiction of the bankruptcy court or taking a chance that the sale will not affect their lien. Purchasers of vessels through the bankruptcy sale process may feel compelled to offer less at the bankruptcy auction due to the uncertainty. Little of the recurrent tension between admiralty and bankruptcy has been resolved.

C. Bankruptcy Courts Have Jurisdiction over Maritime Executory Contracts (Charter Parties)

In a second matter arising out of the same bankruptcy, the Second Circuit determined in Jamaica Shipping Co. v. Orient Shipping Rotterdam, B.V. (In re Millenium Seacarriers, Inc.) (Millenium II) that the bankruptcy court did not abuse its discretion when it assumed jurisdiction over an adversary proceeding seeking enforcement of the court's sale order with respect to a charter party even after having dismissed the main case. [139] The adversary proceeding was found to be one within the bankruptcy court's core jurisdiction because it amounted to a request that the bankruptcy court enforce its own order approving the sale of property. When the bankruptcy court dismissed the bankruptcy case and was faced with whether to retain jurisdiction over the adversary proceeding, it was required to consider four factors--judicial economy, convenience to the parties, fairness, and comity--but was not required to enter explicit findings on those factors. The bankruptcy court did not abuse its discretion in retaining jurisdiction because judicial economy and convenience to the parties were both served by the court's interpretation of its own sale order due to the court's familiarity with the facts.

The shipowner-debtor in bankruptcy can assume or reject executory contracts. Executory contracts are those contracts under which there is a material obligation as yet unperformed by both the debtor (and trustee) and the nondebtor party to the contract. [140] Vessel charters may come within its ambit. [141] Under § 365 of the Bankruptcy Code, a debtor may either assume or reject certain types of contracts, including a vessel's charter, at any time up to the confirmation of a plan of reorganization. [142] In a Chapter 7 proceeding, a trustee has sixty days from the filing of the petition to assume or reject a contract, ***1373** unless that time is extended by the bankruptcy court. [143] In order to assume a charter, the debtor must cure or provide for the cure of all monetary defaults and provide adequate assurance of future performance. [144] A debtor also has the right to assign a lease or charter, even if there is a nonassignment provision in the lease or charter, upon a demonstration of adequate assurance of future performance. [145] If a lessor is seriously harmed by a delay in the determination of whether to assume or reject a lease, it can move the court to require the debtor to assume or reject by a specified date or seek adequate protection payments. [146]

The United States Court of Appeals for the Fifth Circuit has held that a maritime lien attaches for a vessel when the charter commences and the vessel is placed at the disposal of the charterer even though the breach occurs later. [147] In the case, a tug owned by Offshore Supply Ships, Inc. was time chartered to BargeCarib; the tug was sold and the new owner financed the purchase with Bank One which placed a preferred ship mortgage on the vessel as security. [148] Subsequent to the mortgage, the owner of the tug breached the charter party and then defaulted on its loan to Bank One. Bank One arrested the vessel. The Fifth Circuit found that a maritime lien attached at the commencement of the charter party even though the actual breach of the charter occurred much later and, thus, found that the maritime lien that resulted from a breach of the charter had priority over the preferred ship mortgage. [149]

Courts have held that maritime liens arise when the vessel is operated during a bankruptcy proceeding. [150] The rejection of an executory contract by the debtor results in a claim for damages arising from such breach retroactive to the prepetition period. [151] The breach of a time charter by the owner could give rise to a maritime lien. It is based on the fiction that the vessel may be a defendant in a breach of ***1374** contract action where the vessel itself has begun to perform under the contract. [152] A maritime lien for breach of a charter entitles the charterer to proceed in rem directly against the vessel because a maritime lien affords special protection to the party who has been injured by a breach of a maritime contract. [153] As a result, does a charterer have a maritime lien against the vessel for rejection damages resulting from the rejection of its charter? [154] Here, unresolved tension continues to recur between admiralty and bankruptcy law.

Because most charter parties contain an arbitration clause, the tension is exacerbated. The enforceability of contractual arbitration provisions has been the subject of much controversy in federal bankruptcy cases. [155] Courts have not been in agreement on the standards to apply in determining whether parties should be required to submit a dispute to binding arbitration when the dispute is within the jurisdiction of the bankruptcy court. [156] Given the jurisdictional scheme governing proceedings arising in or relating to a bankruptcy case, and the strong policy in favor of enforcing valid contractual commitments to submit disputes to binding arbitration, it is not surprising that tension has increased as a result of the uncertainty.

D. Interruption of Pending Admiralty In Rem Proceedings When a Debtor's Bankruptcy Petition Has Been Filed: Withdraw the Reference to Bankruptcy Court for Admiralty and Maritime Matters

In past cases, the tension between admiralty and bankruptcy law was occasionally resolved by the race to the courthouse.

In O'Hara Corp. v. F/V North Star, a maritime lien holder filed a motion to withdraw the reference to the district court after the vessel's ***1375** owners filed a petition for Chapter 7 bankruptcy liquidation in response to the lien holders' admiralty in rem and in personam actions to enforce maritime liens for unpaid repairs and equipment. [157] The district court denied the motion to withdraw the reference because there was no indication that substantive admiralty law would actually be applied. [158] The district court reasoned that the mere presence of a nontitle 11 issue, even if it is outcome-determinative, does not mean that withdrawal is required. The district court decided that it could not continue with the admiralty issues during the pendency of the bankruptcy case due to the application of the automatic stay.

In Adams v. S/V Tenacious, the debtor wanted the bankruptcy court to stay the foreclosure and sale of a vessel until it could be repaired and sold for fair market value. [159] The creditor argued that the bankruptcy court did not have jurisdiction over an admiralty action to foreclose on a ship mortgage. The creditor argued that the court should hold that the automatic stay provision did not apply to preferred ship mortgages and should permit the foreclosure of the mortgage to proceed before the district court. The court disagreed with the creditor and held that the bankruptcy court had jurisdiction over admiralty claims, including claims based upon preferred ship mortgages. [160] The court felt that

the sole question [was] one of bankruptcy law, i.e., whether a debtor should have additional time to pay [its] debt. Any consideration of admiralty law would therefore be routine. Thus, there [was] no mandatory right to withdrawal. Nor, given the fact that this [was] a run-of-the-mill bankruptcy case, should the Court [have] exercise[d] its discretion to require a permissive withdrawal. [161]

Therefore, where a debtor filed for Chapter 13 bankruptcy after a creditor brought suit against a vessel and debtor to foreclose a preferred ship's mortgage and to collect on the debt, and subsequently the creditor filed a motion for an order determining that the ***1376** bankruptcy court had no jurisdiction over the actions in admiralty regarding foreclosure of the ship's mortgages, the court found that the bankruptcy court did not lack jurisdiction to consider a motion for relief from an automatic stay with respect to an admiralty claim based on a preferred ship's mortgage under the Federal Maritime Lien Act. [162]

The district court may exercise its discretionary power to withdraw the reference to bankruptcy to conduct the vessel sale in admiralty. [163]

While 28 U.S.C. § 157(a) allows the district court to refer jurisdiction to the bankruptcy court, both courts cannot concurrently preside over the same aspects of the case. [164] Once the district court refers the case to the bankruptcy court, unless the district court withdraws that reference, the case is within the subject matter jurisdiction of the bankruptcy court.

Parties can ask a district court to withdraw the reference in whole or in part. [165] Withdrawal of the reference is a matter entirely to be heard and decided by the district court. [166] The district court may withdraw the reference of a proceeding on its own motion or on timely motion of any party, for cause shown. When determining whether cause exists for withdrawing the reference, courts typically consider the goals of promoting uniformity in bankruptcy administration, reducing forum shopping and confusion, conservation of debtors' and creditors' resources, expediting the bankruptcy process, and the right to a jury trial. [167] The party moving the court to withdraw the reference bears the burden of proving the motion is proper. [168]

Withdrawals of the reference are only granted in rare circumstances and withdrawal is not intended to be an escape hatch to ***1377** remove cases or issues from bankruptcy court to the district court. [169] Because decisions regarding discretionary withdrawal of the reference are difficult to reconcile, the tension between admiralty and bankruptcy law will continue.

E. A Bankruptcy Court Can Lose Its Jurisdiction over an Admiralty Asset

Even though a bankruptcy court has exclusive jurisdiction over a maritime asset, it may lose it. For example, in In re Carlomagno Shipping, S.A., another case in which the court noted a conflict between admiralty and bankruptcy jurisdiction, the district court found that the bankruptcy court initially had exclusive jurisdiction over the vessel. [170] It then lifted the automatic stay to allow a creditor to bring the vessel to port to enforce its mortgage in rem against the vessel. Although lifting the stay did not divest the bankruptcy court of jurisdiction, the subsequent in rem jurisdiction acquired by the district court did end the bankruptcy court's jurisdiction. Subsequently, the district court, in an in rem action by the mortgagee, asserted admiralty jurisdiction under 28 U.S.C. § 1333 and Rule 9(h) by ordering the issuance of a writ of arrest and the subsequent sale of the vessel free and clear of liens and encumbrances. The combination of the lifting of the stay and the admiralty court asserting in rem jurisdiction resulted in the admiralty court obtaining exclusive jurisdiction over the vessel. The court noted that it was not the mere vacating of the stay that divested the bankruptcy court of jurisdiction over the property. Rather, it was the subsequent action by the admiralty court in seizing and then selling the vessel that vested the district court with exclusive jurisdiction. [171]

As discussed above, various bankruptcy cases have addressed the processing and ranking of liens and claims in maritime property. Another example includes Ambassador Factors, Division Fleet Factors Corp. v. First American Bulk Carrier Corp. (In re Topgallant Lines, Inc.). [172] In that case, the parties sought a determination of the extent, validity, and priority of their respective claims against freights due to ***1378** the debtor, which had chartered two vessels before filing for Chapter 11. [173] Significant tension arose out of the need for a determination of priority between a land-based Uniform Commercial Code security interest holder and a maritime lien claimant. The bankruptcy court held that a release of the parties' lien on the vessel releases the lien they held against the freight. The holders of valid maritime liens against debtor vessels and their freights lost their lien rights and their priority when they accepted security in lieu of seizure of vessels.

Therefore, the bankruptcy court may lose its jurisdiction over maritime assets as a result of granting relief from the stay that results in a subsequent maritime seizure and sale. Likewise, maritime lien claimants may lose their lien rights when the subject of their liens is relinquished.

F. The Bankruptcy Court May or May Not Keep a Maritime Matter Within Its Noncore Jurisdiction

Noncore maritime matters may not be decided in bankruptcy court. The Second Circuit has held that "[w]ith respect to non-core claims, unless parties otherwise agree, the bankruptcy court can only recommend findings of fact and conclusions of law to the district court." [174]

In Kesselring v. F/T Arctic Hero, prior to the sale of the vessel, the vessel's owners filed for Chapter 11 bankruptcy. [175] The bankruptcy court converted the Chapter 11 proceeding to a Chapter 7 case and ordered the sale of the vessel in the district court. The question before the district court was whether the bankruptcy court had jurisdiction to decide lien priorities by claimants to the proceeds of the sale of the vessel. The court based its decision on the fact that maritime liens in the case are not "the kind of private right(s) 'so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution with limited involvement by the Article III judiciary."' [176] As a result, determination of the maritime lien priorities falls under Article III exclusive district court jurisdiction. [177] Other courts have rejected this reasoning. [178]

***1379 G. A Maritime Creditor May Submit to Bankruptcy Court Jurisdiction Either Unintentionally or Inadvertently**

As discussed above with respect to the Millenium I case in the Second Circuit, a maritime lien creditor can submit to the jurisdiction of the court by actively participating in the litigation of maritime rights in the bankruptcy court. [179] However, filing a proof of claim in the bankruptcy case is sufficient to subject a maritime creditor to the general jurisdiction of the bankruptcy court. [180] The filing of a proof of claim has been likened to the procedural equivalent of filing a complaint. [181] A proof of claim confers on the bankruptcy court both personal jurisdiction over the claimant and subject matter jurisdiction over the claim. [182] Attempts to file limited or conditional proofs of claim have not altered this result. A creditor may also waive its right to a jury trial on its claims by filing a proof of claim. [183]

Participation in the bankruptcy proceeding, even by those maritime creditors holding claims that cannot be adjudicated in bankruptcy court, poses special risks. For example, the sufficiency of an informal proof of claim in the context of a maritime bankruptcy case (seaman's claim) was discussed in Hefta v. Official Committee of Unsecured Creditors (In re American Classic Voyages Co.). [184] The United States Court of Appeals for the Third Circuit reiterated the five-part test for determining whether to accept an "informal" proof of claim: a document will qualify as an informal proof of claim in bankruptcy only if it is in writing, contains a demand by the creditor on the bankruptcy estate, expresses an intent to hold the debtor liable for the debt, and the document is filed with the bankruptcy court. [185] "If a document meets those four requirements, the bankruptcy court must ***1380** determine whether, given the particular surrounding facts of the case, it would be equitable to treat the document as a proof of claim." [186] The Third Circuit agreed that the delay in the case was entirely avoidable and within the seaman's control. Delay was the direct result of the negligence of the seaman's counsel in failing to review the bankruptcy notice sent to him by the claims agent for the debtor.

In sum, maritime creditors may subject themselves and their claims to the jurisdiction of the bankruptcy court, even for those claims for which the reference must be withdrawn. In addition, when a maritime creditor is subject to the jurisdiction of the bankruptcy court, care must be given to carefully adhere to the procedural requirements or risk losing the maritime claim.

H. The Bankruptcy Court Does Not Determine Maritime Personal Injury Cases--But Pay Attention

Bankruptcy judges may hear all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11 referred under 28 U.S.C. § 157(a). [187] Section 157(b)(2) contains illustrations of core proceedings. These illustrations are categorized as follows: 1) matters of administration, 2) avoidance actions, 3) matters concerning property of the estate, and 4) others. [188] Further, § 157(c)(l) authorizes bankruptcy courts to hear noncore proceedings if they are otherwise related to a case under title 11.

Because personal injury tort and wrongful death claims are "noncore" proceedings outside the jurisdiction of bankruptcy judges, § 157(b)(5) statutorily proscribes bankruptcy courts from hearing these cases. [189] Specifically, § 157(b)(5) provides:

> The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending. [190] ***1381** Bankruptcy petitions were never intended as a vehicle to establish federal admiralty or maritime jurisdiction in wrongful death actions. It is well established that under the savings to suitors clause, state courts must apply general admiralty and maritime law. [191] It follows that a state court should not be deprived of jurisdiction midstream and the matter should not be referred to federal district court simply because an insured defendant happens to file a bankruptcy petition. Otherwise, the savings to suitors clause and the

> case law that has developed through the years would be rendered meaningless whenever an insured debtor-defendant files for bankruptcy.

Does that mean that a maritime personal injury claimant can disregard the notice of a shipowner's bankruptcy? In the case of Hefta v. Official Committee of Unsecured Creditors (In re American Classic Voyages Co.), a seaman sustained serious injuries while employed aboard a steamboat owned and operated by American Classic Voyages. [192] His attorney sent the debtor a letter to put it on notice of the claim. Shortly thereafter, the employer filed for bankruptcy. The bankruptcy court entered an order setting a claims bar date. The seaman's attorney wrote the court-appointed claims agent informing the agent that his client was injured and "[had] a claim against the debtor." [193] While the letter also requested a claim form, the seaman never filed a formal claim prior to the court-established bar date.

The seaman's counsel subsequently argued to the bankruptcy court that his letter constituted an informal proof of claim. The bankruptcy court denied the motion and the district court affirmed. The seaman appealed arguing that his informal proof of claim properly filed prior to the bar date should be sufficient proof of claim. The appellate court held that the seaman's letter to the court-appointed claims agent failed to satisfy the modern test for an informal proof of claim. The appellate court also concluded that the seaman's failure to file a timely proof of claim did not result from excusable neglect.

In another permutation of this theme, when a seaman failed to list his maritime lawsuit as an asset in his own bankruptcy schedules, the Fifth Circuit found that he was judicially estopped from proceeding with the lawsuit and ordered the suit dismissed. [194] ***1382** Section 521 of the Bankruptcy Code requires that a debtor, among other things, file lists of all assets and liabilities in his "schedules." [195] The schedules give a detailed picture of the plaintiff's financial history, including any causes of action that the debtor-plaintiff had a right to bring as of the date the bankruptcy case was filed. [196] The schedules are made under oath. [197]

The doctrine of judicial estoppel prevents parties from asserting a position in one legal proceeding that is inconsistent with a position it successfully asserted in another proceeding. [198] The elements of this defense are stated in different ways but they can be boiled down to two: (1) a party asserted a factual position in a legal proceeding that the court or tribunal accepted, and (2) the same party later seeks to assert an entirely inconsistent position in another proceeding. [199]

The rationale for the application of judicial estoppel to these circumstances is that the integrity of the bankruptcy system depends on the full and honest disclosure of all the debtor's assets. The court will not permit a debtor to obtain relief from the bankruptcy court by representing that no litigation matters exist and then subsequently asserting those claims for the debtor's own benefit in a separate proceeding. [200]

Therefore, although a bankruptcy court does not adjudicate maritime personal injury claims, maritime claimants with these types of liens and claims still need to pay close attention to bankruptcy matters, including their own, to avoid losing their claim.

I. The Bankruptcy Court Uses Both Its Own and Maritime Priority Rules When Ranking Claims

Maritime liens have developed as an essential event of vessel operations. The admiralty law foundation for maritime liens stems from the legal fiction of personification of the ship as the legal person transacting business (maritime contract liens) or the wrongdoer (maritime tort liens). [201] They are similar to a security interest but differ from most land liens, although they are analogous in concept to the ***1383** materialman's, mechanic's, or artisan's possessory liens, which arise as a matter of law, a result of work performed in the construction and mechanical services industries. [202] They are also similar to various statutory liens that have been adopted to protect creditors with weak bargaining ability. [203]

The federal statute and the general maritime law applicable to maritime liens establish a detailed ranking of priorities.[204] The Bankruptcy Code also has a priority ranking system.[205] Bankruptcy courts have been challenged with integrating the two. With respect to the distribution of proceeds from the sale of maritime assets, bankruptcy courts have tried to rank maritime liens and claims in the framework of the maritime law.[206] In In re Muma Services, Inc., the bankruptcy court was faced with the somewhat daunting task of resolving the validity and priority of several competing claims to the limited funds derived from the sale of the assets of a shipping company debtor.[207] The competing claims included preferred ship mortgages, seamen's wage claims, penalty wage claims, personal injury claims, an artisan's possessory lien for repairs, an interline constructive trust fund claim, and a claim to subordinate claims under the “equities of the case” doctrine.

Prior to the trial on the competing claims, the court in In re Muma Services had authorized the sale of substantially all of the assets of the shipping company, including leases, accounts receivable, and four vessels.[208] The assets were sold free and clear of all liens and encumbrances. The sale proceeds were used to repay the postpetition financing obligations and related fees and to satisfy unpaid wages, withholding taxes, and other current obligations due to employees. The remaining sale proceeds were deposited into segregated accounts pending the court's determination of the claims and liens. In the meantime, the case converted to Chapter 7 liquidation and the accounts were then controlled by the trustee. The court set a deadline for the trustee and claimants asserting liens against the shipping ***1384** company's sale proceeds to file their claims. Then the court held an evidentiary hearing to consider the validity of the claims and respective priorities of the liens.

The court noted in its decision that it had core jurisdiction over the disputes by virtue of several factors: matters concerning the administration of the estate; allowance or disallowance of claims against the estate; determinations of the validity, extent, and priority of liens; and other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity-security-holder relationship, except personal injury tort or wrongful death claims.[209]

The court recognized that the sale proceeds before it included proceeds from the sale of the four vessels which required that the priority of claims to those proceeds be determined under maritime law.[210]

In In re Muma Services, the court observed that the Maritime Lien Act provision stating that maritime lien claims attach to the proceeds of the sale in accordance with their priorities is similar to the sale of property free of liens under § 363 of the Bankruptcy Code.[211]

With respect to a seaman's claim that had previously been disallowed by the court due to untimeliness, the court reversed its previous order and noted that a secured claimant is not required to file a proof of claim in a bankruptcy case because, unless the lien is avoided, it passes through bankruptcy unaffected.[212] Because this seaman had a lien against the vessel for a maritime personal injury tort claim against a vessel, he had a preferred maritime lien that was not affected simply because the seaman failed to file a timely proof of claim.[213] Consequently, the court treated the maritime tort claim on equal footing with the other maritime tort claims. To the extent that the seaman's claim was ultimately proven and liquidated, it had priority over the bank's preferred ship mortgage.

In addition, the court in In re Muma Services had to resolve a seaman's argument that while he was granted relief from the stay with permission to proceed against the shipping company's insurance proceeds, the terms of the insurance policies made it impossible for ***1385** him to obtain any recovery.[214] The insurance policies were marine protection and indemnity policies that required the debtor actually pay the insured claims before the insurer is required to reimburse the debtor. Thus, the seaman asserted that unless the court were to order the estate to pay his claim, he could not recover under the insurance policies. The court noted that while some authority exists that would preclude the insurance carriers from requiring the estate to pay the claimants before they could recover from the insurance carriers, the trustee would nonetheless be ordered to pay the claim simultaneously with the payment to him from the insurance carriers just as had been done with other claims in the case.

To sum up the court's findings in In re Muma Services, the court determined the overall priorities of the claims by holding that the bank group held first preferred ship mortgages on the debtor's vessels and that to prevail, any other claimants had to establish that their claims ranked above those of the bank group in order to receive any recovery. [215] While the court observed that longshoremen could not sue the vessels for unseaworthiness, they nevertheless were entitled to a maritime lien for their negligence claims, with priority over the ship mortgages. [216] However, the court found that a crane operator's land-based injuries could not give rise to personal injury maritime liens because he was not injured by the vessel, its cargo, or anyone in the act of loading or unloading the cargo. [217] The unions were not entitled to preferred maritime lien status for penalty dismissal wages due under collective bargaining agreements because the workers continued to be employed after the vessels were sold. [218] A repair company's claims for necessaries did not rank ahead of the preferred ship mortgages. [219] The court refused to find a constructive trust supporting the transportation company's interline claims, and an application of the equities of the case did not warrant subordination. [220] The court ordered the sale proceeds to be disbursed first, to any allowed personal injury claims of the longshoremen arising from the negligence of the debtor's vessels and to any allowed personal injury claims of the seamen arising from ***1386** their service as seamen on the vessels to the extent not otherwise covered by insurance, and second, to the bank group. [221]

The bankruptcy court's decision in In re Muma Services reflects a careful approach to resolving maritime issues in the context of bankruptcy liquidation. The court was mindful of its own priority rules imposed by the Bankruptcy Code as well as the ranking of claim priorities in maritime matters through the application of federal statutes and general maritime law.

J. Maritime Liens Impact Bankruptcy Reorganizations: Bankruptcy Practitioners Deal with Them

Financing issues that arise in maritime bankruptcies are traditionally complicated, due in part to the intricacies of the maritime lien issues which are governed by their own set of laws. Any potential liens arising under the unique provisions of maritime law need to be identified and evaluated before financing the DIP or before arranging any exit financing for the debtor because of the potential super priority status of maritime liens.

The rights of preferred mortgage holders in vessels and maritime lien creditors with respect to the collateral, the debtor, and among other creditors have been set out in the applicable federal statutes and the general maritime law.

To summarize briefly, under the Ship Mortgage Act, a valid mortgage on any vessel of the United States constitutes a lien upon the vessel and any proceeds from a foreclosure sale thereof in the amount of the outstanding mortgage indebtedness secured by such vessel. [222] Upon default of any term or condition of the mortgage, such lien may be enforced by suit in personam against the vessel owner and in rem against the vessel in admiralty in any district court of the United States where the vessel may be found. [223] In any suit in rem in admiralty for enforcement of a mortgage lien, a receiver may be appointed to operate the vessel and a United States Marshal may be authorized to take possession of the vessel and sell it to satisfy the liens on the vessel. [224] Upon the sale of any mortgaged vessel by order of the ***1387** district court sitting in its admiralty jurisdiction, all preexisting liens and claims against the vessel are terminated and thereafter attach in accordance with their respective priorities to the proceeds of the sale. [225]

The preferred mortgage lien has priority to the sale proceeds over all claims to the vessel except (l) preferred maritime liens and (2) expenses and fees allowed and costs taxed by the court in connection with the seizure and sale by the Marshal. [226]

In order for a vessel mortgage holder to enforce its lien, a complaint must be filed in a district court of the United States. The standard ship mortgage form extends the lien of the preferred mortgage to the whole of the vessel, together with her engines, appurtenances, equipment, necessaries, and anything else that is necessary for her operation and navigation. After arrest of a vessel it generally takes a minimum of forty-five to sixty days before the seized vessel is sold at public sale by the Marshal. [227] While under arrest, the vessel must be adequately insured, by hull and protection and indemnity insurance, for any event that would give rise to a preferred maritime lien arising out of tort, for general average and/or salvage. [228]

Whenever a voluntary or involuntary petition under the Bankruptcy Code is filed, the automatic stay provision of 11 U.S.C. § 362(a) prevents any act or commencement or continuation of any proceeding to enforce any lien upon all property of the debtor. [229]

The automatic stay, however, has limitations. It does not apply to protect nondebtors or their property. No creditor can legally seize cargo or bunkers owned by a third party that are located on a vessel in order to satisfy a debt owed by the vessel owner. [230] A general unsecured creditor of the vessel owner must first obtain a final judgment against the owner in either state or federal court before it may move to seize any property owned by the vessel owner to satisfy the judgment. Even if a creditor obtains a judgment, it will not have a maritime lien on any vessel unless that creditor also supplied necessaries to or for a specific vessel or can otherwise state a lien under the general maritime law. [231]

***1388** The Federal Maritime Lien Act confers maritime liens on vessels for repairs, supplies, and other necessaries. [232] A lien for necessaries does not outrank a preferred maritime lien or a preferred ship mortgage. [233] However, an exception to this general rule arises if the "necessaries" preserve the value of the vessel. If an expenditure in connection with the preservation of the vessel inures to the benefit of all the creditors, it is an administrative expense claim. If the expenditure does not so inure to the benefit of all creditors, it is not elevated to this preferred category. [234] Nevertheless, a maritime lien only entitles the lien holder to priority of payment from the proceeds of the vessel after proper arrest, seizure, and sale. [235]

In Container Applications International Inc. v. Lykes Bros. Steamship Co. (In re Container Applications International, Inc.) the bankruptcy court denied claims of maritime liens asserted against the debtor's vessels. [236] The creditor asserted entitlement to a maritime lien as the result of providing containers that were used by debtor's vessels. The claimant was unable to establish which container was used on which of the debtor's vessel. The debtor was unable to assist in this regard. As a result, the bankruptcy court held that a creditor could assert maritime liens under the Federal Maritime Lien Act only when the containers are either provided directly to or are earmarked for specific vessels. A creditor cannot claim liens for containers furnished in bulk to fleet owners who then decide upon which ships the containers will be placed.

Bankruptcy lawyers have a wide array of tools to deal with liens and claims, and their validity and ranking, in bankruptcy court. [237] The applicable provisions of the Bankruptcy Code and Bankruptcy Rules do not set forth any specific process for determining maritime claims or for objecting to maritime claims. While some jurisdictions have adopted general procedures for objecting to claims, the great majority of jurisdictions have not established any procedures. The lack of established procedures in a jurisdiction may provide the debtor with an opportunity to create its own procedures that fit the specific needs of the debtor and help the debtor avoid the pitfalls associated with uncertainties and any adverse authority in other jurisdictions. Before ***1389** developing claim-objection procedures, a debtor should review the Bankruptcy Rules and any pertinent local rules to make sure that the requirements built into the Rules are included.

In cases involving maritime liens claims on maritime assets, the trustee or debtor's counsel may move the court to set a maritime lien claim bar date and to provide parameters for the information provided with the claim. Prompt upfront claims resolution of maritime liens may be desirable for the debtor and the other secured lenders so that the proceeds from sales can be turned over with minimal delay and minimal reserves. It may also provide helpful information to negotiate with the company's lenders and other creditors. The information may facilitate the financial advisors' ability to evaluate assets in preparation for asset sales.

An example of a maritime lien claim procedure was deployed in In re Torch Offshore, Inc. [238] In that case, counsel for the debtor moved the court to set a bar date and approve a maritime lien claims submission format. In the context of the motion, the debtor took the official proof-of-claim form and had it adapted and modified into a maritime proof-of-claim form for specific use in the In re Torch Offshore case. The development of this claim form was intended to elicit information needed to clearly identify and analyze maritime liens in the case and to provide for a bar date for filing a maritime lien. Because maritime liens expire only under the doctrine of laches, the form and the noticing procedures had the effect of superseding the statute of limitations for the maritime liens. The debtor in In re Torch Offshore also had to contend with the concept that maritime liens are inchoate. As a result, the debtor asked the bankruptcy court to approve noticing by written notice to known creditors and by notice through publication in the places where the vessels operated to force the square peg--or bankruptcy procedure requiring that creditors receive due-process--into the round hole of secret maritime liens.

Debtors and trustees will undoubtedly attempt to deal with the thorny problem of inchoate maritime liens in the context of liquidating maritime assets. They will continue to utilize claim notice, bar date, and objection procedures specifically aimed to force timely identification of maritime bankruptcy claims, to assist in identifying those claims that have maritime liens, and to give professionals involved in the bankruptcy case a more effective way to evaluate the possibility of secured liabilities being inadvertently primed.

***1390** The bankruptcy system has a built-in mechanism for dealing with lien and claim adjudication, including determination of validity and ranking of priorities. The process has been adopted for maritime liens and claims as well. For example, a Chapter 7 trustee or debtor in possession can file an adversary proceeding to contest the validity or amounts of liens asserted by maritime creditors. [239] Due to the tendency of bankruptcy courts to resolve these matters quickly, the bankruptcy case must be closely monitored by the maritime creditors to ensure that their rights are protected.

The bankruptcy system has also dealt with some of the threshold issues of maritime lien law. For example, there are actions in which bankruptcy courts determine whether a craft qualifies as a vessel under admiralty law. In one case, the creditor sought determination that a casino was a "vessel" subject to a maritime lien. [240] In another case, the bankruptcy court held that "two dockside gaming casinos, designed and intended to be permanently moored to their berths, were not vessels for the purposes of federal admiralty and maritime matters." [241]

In light of the recurrent tensions between maritime and bankruptcy law, bankruptcy practitioners will continue to creatively deploy the mechanisms at their disposal to force a resolution of the maritime issues in the bankruptcy case. Maritime practitioners must be vigilant in ensuring that their clients' rights are nonetheless adequately accounted for and protected in these fast-paced proceedings.

V. Conclusion

Through this Article we have examined the recurrent tensions and questions that have vexed maritime and bankruptcy practitioners for decades. Questions such as: When can a bankruptcy court take jurisdiction over maritime assets, disputes, or issues? When can it not? Must a bankruptcy court taking jurisdiction utilize maritime principles and procedures? Can the resolution of maritime issues by a bankruptcy court result in a final judgment? Could a bankruptcy court ***1391** oversee the sale of ships not within the territory of its district, and not within the United States? Is the exercise of in rem jurisdiction over property located abroad a fiction? Can the bankruptcy court circumvent the maritime doctrine of laches or an admiralty statute of limitations by setting a deadline for creditors to file proofs of claim?

Although many of these recurrent tensions could be resolved by extending admiralty jurisdiction to the bankruptcy court, it appears unlikely that the statutory requirements to accomplish that will be enacted anytime soon. It appears equally unlikely that the district courts will consistently withdraw the reference to bankruptcy court, when requested, for maritime issues. In the meantime, maritime lawyers will have to monitor closely bankruptcy cases that may affect their clients' maritime claims.

Understanding the principles behind the bankruptcy legal system, and adhering to the code and rules, will result in the successful resolution of maritime claims in bankruptcy.

More than two decades have passed since the Tulane Admiralty Institute scholars presented many of these issues, [242] and while it is clear that the tensions have recurred, little has been resolved since. Globalization and international economic decline have only exacerbated the tensions between maritime and bankruptcy law by placing more and more maritime assets and issues on the dockets of insolvency courts. It remains to be seen whether the Model Law and the adoption of that legal regime in Chapter 15 of the Bankruptcy Code will provide assistance in reducing tensions when maritime assets and issues become the focus of global bankruptcies.

Footnotes

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1 See Manfred Balz, The European Union Convention on Insolvency Proceedings, 70 Am. Bankr. L.J. 485, 486 (1996); Patrick J.S. Griggs, Uniformity of Maritime Law--An International Perspective, 73 Tul. L. Rev. 1551, 1553 (1999).

2 See The Tulane Admiralty Law Institute Symposium on Admiralty Interface: Bankruptcy v. Maritime Rights, 59 Tul. L. Rev. 1157 (1985) (reviewing the conflict between maritime and bankruptcy law).

3 See, e.g., John J. Chung, The Retrogressive Flaw of Chapter 15 of the Bankruptcy Code: A Lesson from Maritime Law, 17 Duke J. Comp. & Int'l L. 253, 253 (2007); Lynn M. LoPucki, Universalism Unravels, 79 Am. Bankr. L.J. 143, 143 (2005) [hereinafter LoPucki, Universalism Unravels]; Lynn M. LoPucki, The Case for Cooperative Territoriality in International Bankruptcy, 98 Mich. L. Rev. 2216, 2218 (2000); John A.E. Pottow, Procedural Incrementalism: A Model for International Bankruptcy, 45 Va. J. Int'l L. 935, 944-45 (2005); Frederick Tung, Fear of Commitment in International Bankruptcy, 33 Geo. Wash. Int'l L. Rev. 555, 561 (2001); Jay Lawrence Westbrook, A Global Solution to Multinational Default, 98 Mich. L. Rev. 2276, 2279 (2000). “Universalism” is the notion of applying a single legal regime to all aspects of a debtor's affairs on a worldwide basis. The “territorial approach” emphasizes the right of each country to adjudicate the disposition of an insolvent debtor's assets within its jurisdiction pursuant to its own laws for the benefit of domestic creditors without regard to foreign insolvency proceedings.

4 UNCITRAL, 1997--UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment, http://www.uncitral.org/uncitral/en/uncitral_ texts/insolvency/1997Model.html (last visited Apr. 2, 2009).

5 The Second Circuit noted: “The management of transnational insolvencies is concededly underdeveloped.” Maxwell Commc'n Corp. v. Societe Generale (In re Maxwell Commc'n Corp.), 93 F.3d 1036, 1047 (2d Cir. 1996).

6 See Ian F. Fletcher, International Insolvency in Transformation: United Kingdom Perspectives on Implementation of the European Union Regulation on Insolvency Proceedings, in Aktuelle Entwicklungen des europäischen und internationalen Zivilverfahrensrechts 279 (Peter Gottwald ed., 2002); Bob Wessels, Principles of European Insolvency Law, Am. Bankr. Inst. J., Sept. 2003, at 28.

7 Prior to the enactment of Chapter 15, the Bankruptcy Code dealt with international issues through a single section repealed and replaced by the new Chapter 15. Prior code §304 permitted the filing of ancillary cases in U.S. bankruptcy courts by foreign representatives “to protect the dignity of concurrently existing foreign proceedings.” Evelyn H. Biery et al., A Look at Transnational Insolvencies and Chapter 15 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, 47 B.C. L. Rev. 23, 33 (2005). A major difference between the two is that the language of §304 was primarily discretionary as opposed to the mandatory language of many of the provisions of Chapter 15. The discretion provided in §304 resulted in a wide variety of decisions under the old law, some maintaining territoriality and others embracing universalism. Id. at 41-48 (discussing cases interpreting the discretionary §304).

8 For the text of the Model Law on Cross-Border Insolvency, see UNCITRAL, supra note 4.

9 Jenny Clift, The UNCITRAL Model Law on Cross-Border Insolvency--A Legislative Framework To Facilitate Coordination and Cooperation in Cross-Border Insolvency, 12 Tul. J. Int'l & Comp. L. 307, 316 (2004) (citations omitted).

10 See Westbrook, supra note 3, at 2279 (citations omitted). The UNCITRAL Legislative Guide on Insolvency Law can be found at UNCITRAL, 2004-- UNCITRAL Legislative Guide on Insolvency Law, http:// www.uncitral.org/uncitral/en/uncitral_texts/insolvency/2004Guide.html (last visited Apr. 2, 2009).

11 See 11 U.S.C. §1506 (2006); see also Theodore Zink & Francisco Vazquez, U.S. Bankruptcy Code Chapter 15: The Early Returns, Insolvency Intelligence, Mar. 2007, at 17.

12 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, §801, 119 Stat. 23, 134-45 (codified as amended at 11 U.S.C. §§1501-1532) [hereinafter BAPCPA]; see 11 U.S.C. §1506.

13 The use of the term “ancillary” signals an important choice between two methods of dealing with transnational bankruptcy cases. Ancillary proceedings are generally those limited proceedings that are designed to assist a foreign proceeding. The primary role of an ancillary proceeding is to aid the foreign court in administering the debtor's assets. This is contrasted with parallel proceedings in which full proceedings are deployed in each country where the debtor has assets. H.R. Rep. No. 109-31, pt. 1, at 107-08, reprinted in 2005 U.S.C.C.A.N. 88, 171 (2005).

14 Jay Lawrence Westbrook, Chapter 15 at Last, 79 Am. Bankr. L.J. 713, 715 (2005).

15 See Iida v. Kitahara (In re Iida), 377 B.R. 243 (B.A.P. 9th Cir. 2007).

16 LoPucki, Universalism Unravels, supra note 3, at 143. See generally In re Petition of Hourani, 180 B.R. 58, 63-64 (Bankr. S.D.N.Y. 1995) (“[T]he courts in the United States generally are increasingly supportive of the philosophy underlying universality and are employing the doctrine in an ever growing number of cases and circumstances.”).

17 U.S. Courts, Chapter 15: Ancillary and Other Cross-Border Cases, http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter15.html (last visited May 6, 2009).

18 11 U.S.C. §1501(a) (2006).

19 Id. §§1504, 1515(a). “Foreign proceeding” and “foreign representative” are defined in 11 U.S.C. §101(23)-(24).

20 For example, the bankruptcy court denied the effort of a receiver in a Canadian bankruptcy that tried enlisting the help of the U.S. bankruptcy court by way of a letter that requested a stay of litigation before the court. The court found that the receiver first needed to commence “an ancillary proceeding for recognition of a foreign proceeding before a bankruptcy court.” United States v. J.A. Jones Constr. Group, LLC, 333 B.R. 637, 638 (E.D.N.Y. 2005).

21 See Fed. R. Civ. P. 65(a); Roso-Lino Beverage Distribs., Inc. v. Coca-Cola Bottling Co. of N.Y., 749 F.2d 124, 125 (2d Cir. 1984) (noting that the foreign representative must establish (a)that the debtor's interests will be irreparably harmed if the injunction is not issued and (b)either (i)the foreign representative is likely to succeed on the merits of the litigation or (ii)sufficiently serious questions going to the merits of the case make them fair grounds for litigation and the balance of hardships tips decidedly toward the petitioner).

22 11 U.S.C. §1519.

23 Id. §1517. Chapter 15 also governs a “foreign nonmain proceeding,” see id. §1517(a)(1), which is defined as “a foreign proceeding, other than a foreign main proceeding, pending in a country where the debtor has an establishment.” Id. §1502(5). As one would expect, the recognition of a foreign main proceeding triggers more provisions than that of a foreign nonmain proceeding. See id. §1520.

24 Id. §1502(4).

25 See Jay Lawrence Westbrook, Multinational Enterprises in General Default: Chapter 15, the ALI Principles, and the EU Insolvency Regulation, 76 Am. Bankr. L.J. 1, 14 (2002). Issues may abound, however, in light of flags of convenience and related concepts applicable to entity formation. The place of incorporation often will have little to do with the center of an entity's activities.

26 Chung, supra note 3, at 258.

27 Id. (citing 11 U.S.C. §§1504, 1515(a), 1520); see also Jay Lawrence Westbrook, Universalism and Choice of Law, 23 Penn St. Int'l L. Rev. 625, 630 (2005) (concluding that the rationale for this method is its greater predictability).

28 Chung, supra note 3, at 258. Under admiralty law, the ship's flag is an important determiner of the source of law. For example, a ship flying the American flag in the Persian Gulf will be subject to American admiralty law, and a ship flying a Norwegian flag in American waters will be subject to Norwegian admiralty law. This also applies to criminal law governing the ship's crew. But the ship must be flying the flag legitimately; that is, there must be more than insubstantial contact between the ship and its flag in order for the law of the flag to apply. See The Schooner Exchange v. M'Faddon, 11 U.S. (7 Cranch) 116, 117 (1812).

29 Compare Koreag, Control et Revision S.A. v. Refco F/X Assocs. (In re Koreag, Controle et Revision S.A.), 961 F.2d 341, 349 (2d Cir. 1992), aff'd in part by Refco F/X Assocs. v. Mebco Bank, S.A., No. 89 Civ. 3071, 1992 WL 200748 (S.D.N.Y. July 31, 1992) (holding that property determinations may be made before ordering the property turned over to the foreign proceeding), with JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A. de C.V., 412 F.3d 418, 426-27 (2d Cir. 2005) (rejecting the creditor's attempt to use a property determination to avoid the foreign bankruptcy proceeding).

30 In re Koreag, 961 F.2d at 349; see Lykes Bros. S.S. Co. v. Hanseatic Marine Serv. (In re Lykes Bros. S.S. Co.), 207 B.R. 282, 284 (Bankr. M.D. Fla. 1997) (finding the effect that foreign actions have on U.S. interests was a sufficient basis for enforcing the automatic stay without an independent basis for the exercise of personal jurisdiction).

31 See 11 U.S.C. §1506.

32 This will likely require an affidavit and perhaps testimony of a foreign law expert. See Aerovias de Mexico, S.A. de C.V. v. Feltman (In re Empresa de Transportes Aero del Peru, S.A.), 263 B.R. 367, 378 (S.D. Fla. 2001) (finding that a bankruptcy court may not take judicial notice of foreign laws or of purported deficiencies of foreign legal systems).

33 See 11 U.S.C. §§1519(a)(2), 1520(a)(1).

34 See Universal Oil, Ltd. v. Allfirst Bank (In re Millenium Seacarriers, Inc.) (Millenium I), 419 F.3d 83, 85-86, 2005 AMC 1987, 1987-88 (2d Cir. 2005) ("[T]he congressional grant of subject matter jurisdiction to the district courts to adjudicate in bankruptcy 'all ... property, wherever located' extends to vessels that have not been arrested within the district court's jurisdiction." (citation omitted)). Prior to the adoption of Chapter 15, courts had found the court's jurisdiction to extend abroad. See Hong Kong & Shanghai Banking Corp. v. Simon (In re Simon), 153 F.3d 991, 996 (9th Cir. 1998) (construing 11 U.S.C. §541(a), under which the debtor's interest in property wherever located is considered property of the estate). However, on a close reading of the decision, it is apparent that the court did all it could to avoid dealing with the intended extraterritorial reach of the Bankruptcy Code. For example, in Simon, the court avoided confronting the issue by relying on the foreign party's participation as a creditor in the debtor's bankruptcy case. Id. at 997.

35 At the time that this Article was written, legislation based on the UNCITRAL Model Law on Cross-Border Insolvency has been adopted in: Australia (2008), the British Virgin Islands (2005), Colombia (2006), Eritrea (1998), Great Britain (2006), Japan (2000), Mexico (2000), Montenegro (2002), New Zealand (2006), Poland (2003), the Republic of Korea (2006), Romania (2003), Serbia (2004), South Africa (2000), and the United States of America (2005). For updates and status, see UNCITRAL, supra note 4 (select "Status" hyperlink).

36 251 B.R. 31, 37 (Bankr. D. Del. 2000).

37 Id. at 38.

38 Several maritime Chapter 15 cases have been filed in the Bankruptcy Court for the Southern District of New York due to the maritime attachment of the debtor's electronic fund transfers (EFTs) passing through New York banks. Foreign bank transactions being paid in dollars are routinely routed through New York banks. In a 2002 decision, the Second Circuit Court of Appeals ruled that EFTs could be attached as they passed through the New York intermediary banks on their way to or from overseas financial institutions. Winter Storm Shipping, Ltd. v. TPI, 310 F.3d 263, 273, 2002 AMC 2705, 2717 (2d Cir. 2002).

39 Order Pursuant to 11 U.S.C. §§105(a), 1504, 1515, 1517, 1519, 1520 and 1521 Recognizing Foreign Main Proceeding and Granting Further Relief and Additional Assistance, In re Britannia Bulk PLC, No. 08-14543 (Bankr. S.D.N.Y. Dec. 10, 2008) [hereinafter In re Britannia Order].

40 See Britannia Bulk Holdings Inc., Registration Statement Under the Securities Act of 1933 (Form F-1), at 1 (June 4, 2008), available at http://www.sec.gov/Archives/edgar/data/1421150/000104746908007203/a2181327zf-1.htm.

41 Declaration of Mark Shaw Pursuant to 11 U.S.C. §1515 in Support of (1)Petition for Entry of an Order Recognizing Foreign Main Proceeding and Granting Further Relief; and (2)Application for Provisional Relief, In re Britannia Bulk PLC 4, 7 (Nov. 17, 2008), available at http://chapter15.com/cl5_ files/20090225/004_Declaration_of_Mark_Shaw.pdf.

42 Id. at 6.

43 Id.

44 Id.

45 Order Continuing Temporary Restraining Order and Granting Provisional Relief Pending Recognition of a Foreign Main Proceeding Pursuant to 11 U.S.C. §§105(a), 1504, 1515, 1517, and 1519, In re Britannia Bulk PLC, No. 08-14543 (Bankr. S.D.N.Y. Nov. 20, 2008), available at http://chapter15.com/c15_files/20090225/010_OrderGrantingProvisionalRelief.pdf.

46 In re Britannia Order, supra note 39, at 3-4.

47 11 U.S.C. §1515(b)(1) (2006); see 11 U.S.C. §§1517(b)(1), 1522; Constr. Drilling, Inc. v. Chusid, 63 F. Supp. 2d 509, 514 (D.N.J. 1999) (hearing a challenge to the authenticity of foreign public documents on the grounds that they fail to meet the requirements for self-authentication under Fed. R. Evid. 902(3) and Fed. R. Civ. P. 44(a)(2)).

48 See Graydon S. Staring, Bankruptcy--An Historical View, 59 Tul. L. Rev. 1157, 1166 (1985).

49 Recently, bankruptcy practitioners have tried to bring maritime liens and claims into the bankruptcy process using special procedures orders. See In re Muma Servs., Inc., 322 B.R. 541, 555 (Bankr. D. Del. 2005); see also Carol Logue, Maritime Liens and Assets in Bankruptcy: New Developments, Int'l Committee: ABI Committee News (Am. Bankr. Inst., Alexandria, Va.), Feb. 10, 2007, http://www.abiworld.org/committees/newsletters/international/vol4num1/international2.pdf.

50 John A. Edginton, 3B Benedict on Admiralty 1-21 (2008) (footnote omitted).

51 Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934).

52 Recent decisions have extended admiralty contract jurisdiction to a vessel sale agreement, forward freight agreement, and even commodity sales contracts containing provisions relating to ocean transport and demurrage. See Kalafrana Shipping Ltd. v. Sea Gull Shipping Co., 591 F. Supp. 2d 505, 510-11, 2008 AMC 2409, 2416-17 (S.D.N.Y. 2008).

53 See 11 U.S.C. §§365, 544-50 (2006).

54 A maritime lien is nonconsensual and unrecorded; it also follows the vessel into the hands of even a good faith purchaser. United States v. ZP Chandon, 889 F.2d 233, 238, 1990 AMC 316, 323 (9th Cir. 1989). For example, the shipowner's charter lien upon subfreights earned by the charterer prevailed against the bankruptcy trustee, even though the lien was not filed. Walsh v. Placedo Shipping Corp. of Liberia (In re Pac. Caribbean Shipping (U.S.A.), Inc.), 789 F.2d 1406, 1408, 1986 AMC 2308, 2311 (9th Cir. 1986).

55 Robert Guy Matthews, Bethlehem Steel Seeks Chapter 11 Shelter, Announces Plan To Speed Restructuring, Wall St. J., Oct. 16, 2001, at A3. For a brief history of the demise of Bethlehem Steel, see Wikipedia, Bethlehem Steel, http://en.wikipedia.org/wiki/Bethlehem_Steel (last visited Apr. 2, 2009).

56 See 11 U.S.C. §1129(b)(2)(B)(ii).

57 Susan Jensen, A Legislative History of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, 79 Am. Bankr. L.J. 485, 566 (2005) (quoting President George W. Bush as saying that “[the bankruptcy laws] give those who cannot pay their debts a fresh start”).

58 But “property of the estate” does not include a bond that has been posted in lieu of detention of a vessel. See Atl. Richfield Co. v. Good Hope Refineries, Inc., 604 F.2d 865, 870, 1980 AMC 470, 474 (5th. Cir. 1979); In re Riffe Petroleum Co. v. Cibro Sales Corp., 601 F.2d 1385, 1390, 1979 AMC 1611, 1616 (10th Cir. 1979).

59 11 U.S.C. §1129(b)(2)(B)(ii).

60 In re Genesis Health Ventures, Inc., 266 B.R. 591, 612 (Bankr. D. Del. 2001) (stating that it is not fair and equitable for senior class to receive more than full compensation for its claims); In re MCorp Fin., Inc., 137 B.R. 219, 235 (Bankr. S.D. Tex. 1992) (noting that senior class cannot receive more than full compensation for its claims).

61 See 11 U.S.C. §1129(b)(1), (b)(2)(B)(ii).

62 George L. Varian, Rank and Priority of Maritime Liens, 47 Tul. L. Rev. 751, 758 (1973) (discussing the method of ranking creditors in admiralty).

63 See 11 U.S.C. §727.

64 See id. §541(a); Official Comm. of Unsecured Creditors v. PSS S.S. Co. (In re Prudential Lines Inc.), 928 F.2d 565 (2d Cir. 1991).

65 See Consub Del. LLC v. Schahin Engenharia Limitada, 543 F.3d 104, 105, 2008 AMC 2113, 2114 (2d Cir. 2008) (attachment of wire transfer funds passing through New York bank).

66 See Council Commerce Corp. v. Sterling Navigation Co. (In re Sterling Navigation Co.), 31 B.R. 619, 623, 1983 AMC 2240, 2246 (S.D.N.Y. 1983) (citing In re N. Atl. & Gulf S.S. Co., 204 F. Supp. 899, 905, 1963 AMC 871, 877 (S.D.N.Y. 1962), aff'd, Schilling v. A/S D/S Dannebrog, 320 F.2d 628, 1964 AMC 678 (2d Cir. 1963)).

67 See William Tetley, Arrest, Attachment, and Related Maritime Law Procedures, 73 Tul. L. Rev. 1895, 1902-03 (1999).

68 In the United States, maritime lien claimants may, but are not required to, file a notice of lien with the National Vessel Documentation Center for United States registered vessels. See 46 C.F.R. §67.253 (2008).

69 The United States Supreme Court ruled that even though the owner of a vessel was unaware that the master of the chartered vessel contracted for necessary supplies, the transaction created a maritime lien and thus bound the ship. The South Coast, 251 U.S. 519, 522 (1920).

70 See, e.g., Universal Oil Ltd. v. Allfirst Bank (In re Millenium SeaCarriers, Inc.) (Millenium I), 419 F.3d 83, 85, 2005 AMC 1987, 1987 (2d Cir. 2005) ("This case presents a putative clash between bankruptcy law and admiralty law.").

71 See Charles A. Lovell & Eugene G. Bernardo, II, The Continuing Debate over Custodia Legis: An Argument for Bankruptcy Court Primacy, 30 J. Mar. L. & Com. 73, 78-79 (1999); George Rutherglen, Admiralty and Bankruptcy Revisited: Effects of the Bankruptcy Reform Act of 1978, 65 Tul. L. Rev. 503, 503 (1991); Anthony Michael Sabino, Priority Freight: The Law of Maritime Liens, Freights, and General Creditors, 17 Tul. Mar. L.J. 51, 51 (1992); William Tetley, Conflicts of Law Between the Bankruptcy Courts in Admiralty: Canada, United Kingdom, United States, and France, 20 Tul. Mar. L.J. 257, 258-59 (1996); Melissa K.S. Alwang, Note, Steering the Most Appropriate Course Between Admiralty and Insolvency: Why an International Insolvency Treaty Should Recognize the Primacy of Admiralty Law over Maritime Assets, 64 Fordham L. Rev. 2613, 2613 (1996).

72 See 28 U.S.C. §1334(a) (2006); Lovell & Bernardo, supra note 71, at 73-76, 80; Rutherglen, supra note 71, at 512-17; Sabino, supra note 71, at 51-52; Alwang, supra note 71, at 2617-21.

73 See 28 U.S.C. §§157(a), (d), 1334(a)-(b).

74 Id. §157(a); Schulman v. Cal. State Water Res. Control Bd. (In re Lazar), 200 B.R. 358, 366 (Bankr. C.D. Cal. 1996) (holding that each district court is authorized to adopt general order of reference for bankruptcy cases).

75 See, e.g., U.S. Dist. Ct. E. Dist. La. R. 83.4.1.

76 28 U.S.C. §1334(b); In re Combustion Eng'g, Inc., 391 F.3d 190, 225 (3d Cir. 2004).

77 28 U.S.C. §157(b)(1).

78 Halper v. Halper, 164 F.3d 830, 836 (3d Cir. 1999).

79 Id. at 837.

80 In re Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis omitted); see also In re Fed.-Mogul Global Inc., 300 F.3d 368, 381 (3d Cir. 2002) (refusing to revisit Pacor and noting the Supreme Court endorsement of its holding).

81 The same proceedings can be held by one court to be a core proceeding and by another court to be noncore. The inconsistencies have vexed bankruptcy attorneys as well as maritime attorneys.

82 See 28 U.S.C. §157(b)(4); In re Exide Techs., 544 F.3d 196, 206 (3d Cir. 2008); Diaz Contracting, Inc. v. Nanco Contracting Corp. (In re Diaz Contracting, Inc.), 817 F.2d 1047, 1051-53 (3d Cir. 1987).

83 Diaz, 817 F.2d at 1051-53.

84 28 U.S.C. §157(d) (emphasis added).

85 46 U.S.C. §31301 (2006); Am. Ins. Co. v. Canter, 26 U.S. (1 Pet.) 511, 545-46 (1828) ("A case in admiralty does not, in fact, arise under the Constitution or laws of the United States. These cases are as old as navigation itself; and the law, admiralty and maritime, as it has existed for ages, is applied by our Courts to the cases as they arise.").

86 28 U.S.C. §157(d).

87 See O'Hara Corp. v. F/V North Star, 212 B.R. 1, 2 (D. Me. 1997); Adams v. S/V Tenacious, 203 B.R. 297, 299, 1997 AMC 1880, 1882 (D. Alaska 1996).

88 130 Cong. Rec. 6244 (1984) (statement of Rep. Kramer).

89 In order to evaluate whether a claim is "core," a court must first look to the illustrative list of core proceedings found in §157(b)(2). It must then conduct the Third Circuit's two-step test, according to which a claim will be deemed core "(1)if it invokes a substantive right provided by title 11 or (2)if it is a proceeding, that by its nature, could arise only in the context of a bankruptcy case." Halper v. Halper, 164 F.3d 830, 836 (3d Cir. 1999) (citations omitted).

90 In re Vicars Ins. Agency, Inc., 96 F.3d 949, 954 (7th Cir. 1996); see also Shugrue v. Air Line Pilots Ass'n, Int'l (In re Ionosphere Clubs, Inc.), 922 F.2d 984, 995 (2d Cir. 1990) (construing the withdraw provision narrowly).

91 28 U.S.C. §157(b)(2).

92 Kelley v. Nodine (In re Salem Mortgage Co.), 783 F.2d 626, 634 (6th Cir. 1986).

93 U.S. Lines, Inc. v. Am. S.S. Owners Mut. Prot. and Indem. Ass'n (In re U.S. Lines, Inc.), 197 F.3d 631, 636-37, 2000 AMC 784, 787-89 (2d Cir. 1999).

94 Id. at 636, 2000 AMC at 787-89.

95 Id. at 639, 2000 AMC at 791-92.

96 The tension arising from these issues recurs even in the same main case. See Dicola v. Am. S.S. Owners Mut. Prot. & Indem. Ass'n (In re Prudential Lines Inc.), 158 F.3d 65, 1999 AMC 609 (2d Cir. 1998) (finding that the recycling arrangement created by the Stipulation and Settlement Agreement could not be used to trigger the American club's indemnification obligations); Asbestosis Claimants v. Am. S.S. Owners Mut. Prot. & Indem. Ass'n (In re Prudential Lines Inc.), 533 F.3d 151, 153, 156, 2008 AMC 1665, 1666, 1669-70 (2d Cir. 2008) (holding that the "payment structure" involving "transactions whereby the [Bankruptcy] Trustee would make a payment of a Claimant's claim [,] then submit the payment to the [i]nsurer for indemnification[,] use the proceeds of the indemnity payment to pay further claims, then seek further indemnification, and repeat the process until all claims were paid" did not violate the pay-first provision).

97 28 U.S.C. §2201 (2006).

98 U.S. Lines, Inc. v. Am. S.S. Owners Mut. Prot. & Indem. Ass'n (In re U.S. Lines Inc.) (U.S. Lines I), 169 B.R. 804, 821, 825 (Bankr. S.D.N.Y. 1994), rev'd, 220 B.R. 5 (S.D.N.Y. 1997), rev'd, 197 F.3d 631, 2000 AMC 784 (2d Cir. 1999).

99 U.S. Lines, Inc. v. Am. S.S. Owners Mut. Prot. & Indem. Ass'n (In re U.S. Lines, Inc.) (U.S. Lines II), 220 B.R. 5, 13 (S.D.N.Y. 1997), rev'd, 197 F.3d 631, 2000 AMC 784 (2d Cir. 1999).

100 In re U.S. Lines, 197 F.3d at 639, 2000 AMC at 791.

101 Id. at 641, 2000 AMC at 794.

102 Id.

103 Id. at 640-41, 2000 AMC at 794.

104 Id. at 638, 2000 AMC at 790.

105 See, e.g., Nw. Inst. of Psychiatry, Inc. v. Travelers Indem. Co. (In re Nw. Inst. of Psychiatry, Inc.), 268 B.R. 79, 91 (Bankr. E.D. Pa. 2001) ("[T]he Coverage Issue is a core proceeding ... since the policy was issued to the debtor-in-possession post-petition and the recovery under that policy is integral to the Debtor's ability to reorganize ...."); see also Heaven Sent, Ltd. v. Centennial Ins. Co. (In re Heaven Sent, Ltd.), 50 B.R. 636, 638 (Bankr. E.D. Pa. 1985) (holding that an action to enjoin postpetition cancellation of an insurance policy was a core proceeding).

106 See, e.g., In re U.S. Brass Corp., 110 F.3d 1261, 1268 (7th Cir. 1997) (holding that an action seeking declaration of rights to insurance coverage is noncore).

107 Universal Oil Ltd. v. Allfirst Bank (In re Millenium Seacarriers, Inc.) (Millenium I), 419 F.3d 83, 98, 2005 AMC 1987, 2004 (2d Cir. 2005).

108 Id.

109 Jam. Shipping Co. v. Orient Shipping Rotterdam, B.V. (In re Millenium Seacarriers, Inc.) (Millenium II), 458 F.3d 92, 95, 2006 AMC 2376, 2377-78 (2d Cir. 2006).

110 U.S. Lines, Inc. v. Am. S.S. Owners Mut. Prot. & Indem. Ass'n (In re U.S. Lines, Inc.), 197 F.3d 631, 637, 2000 AMC 784, 788 (2d Cir. 1999) (citations omitted).

111 28 U.S.C. §157(b)(5) (2006).

112 See Maduro Travel, Inc. v. Skandinaviska-Enskilda Banken (In re SeaEscape Cruises Ltd.), 191 B.R. 944, 948-49, 1995 AMC 2363, 2368-69 (S.D. Fla. 1995), aff'd, 98 F.3d 1353 (11th Cir. 1996) (finding that a contract between a travel agency and a Chapter 11 debtor cruise line was maritime in nature).

113 419 F.3d 83, 91-92, 2005 AMC 1987, 1996-97 (2d Cir. 2005).

114 Id. at 86, 2005 AMC at 1998.

115 "Credit bidding" is a concept set out in Bankruptcy Code Section 363(k), which provides a creditor with a valid security interest in the assets being sold the right to bid for such assets by proposing to set off its claim against the purchase price of the assets. The ability to credit bid gives the lien holder protection against an attempt to sell its collateral below the amount owed.

116 Millenium I, 419 F.3d at 83-92, 2005 AMC at 1987-96.

117 Id. at 90-91, 2005 AMC at 1994-95.

118 Id. at 92-95, 2005 AMC at 1996-97.

119 Id. at 92, 2005 AMC at 1996-97.

120 Id., 2005 AMC at 1997.

121 Id. at 94, 2005 AMC at 1999; see Cunard S.S. Co. v. Salen Reefer Servs. AB, 773 F.2d 452, 452-53, 1986 AMC 163, 164 (2d Cir. 1985) (vacating as a matter of comity a maritime attachment obtained after the debtor had commenced bankruptcy proceedings abroad).

122 Millenium I, 419 F.3d at 95, 2005 AMC at 2000.

123 Id.

124 Id.

125 Id. at 88-89, 2005 AMC at 1991-92.

126 Id.

127 Id. at 91, 2005 AMC at 1995.

128 Id. at 91-92, 2005 AMC at 1995-96.

129 Id. at 92-93, 2005 AMC at 1997 (quoting Am. Dredging Co. v. Miller, 510 U.S. 443, 447, 1994 AMC 913, 915 (1994)).

130 Id. at 94, 2005 AMC at 1999.

131 Id. at 102, 2005 AMC at 2009 (quoting Am. Dredging, 510 U.S. at 447, 1994 AMC at 915).

132 Id. at 98, 2005 AMC at 2005.

133 Id. at 102, 2005 AMC at 2009.

134 Id. at 103, 2005 AMC at 2010-11. There is always such risk. For example, in the case of purchase of a vessel at a judicial sale in Greece, which was thought to be free and clear of all liens and encumbrances, the court would not permit summary judgment against a maritime lien holder whose lien predated the judicial sale. Crescent Towing & Salvage Co. v. M/V Anax, 40 F.3d 741, 745, 1995 AMC 1106, 1110-11 (5th Cir. 1994).

135 Millenium I, 419 F.3d at 104, 2005 AMC at 2012.

136 Id. at 101-03, 2005 AMC at 2009-11.

137 The Second Circuit was careful to point out that its opinion does not answer the question of whether the bankruptcy court could have expunged the vessels of their liens had it not had jurisdiction over the lienors. Id. at 103, 2005 AMC at 2011.

138 Id. at 86, 2005 AMC at 1987.

139 458 F.3d 92, 97, 2006 AMC 2376, 2379-80 (2d Cir. 2006).

140 See Edginton, supra note 50, at 12-1 (citing 4 Collier Bankruptcy Practice Guide P68.02 (15th ed. 2008)).

141 Id. at 12-2.

142 11 U.S.C. §365(d)(2) (2006).

143 Id. §365(d)(1).

144 Id. §365(b)(1)(A).

145 Id. §365(b)(1)(C).

146 Id. §365(d)(2).

147 Bank One La. N.A. v. Mr. Dean MV, Etc., 293 F.3d 830, 838, 2002 AMC 1617, 1628 (5th Cir. 2002).

148 Id. at 838, 2002 AMC at 1628.

149 Id.

150 See United States v. ZP Chandon, 889 F.2d 233, 238, 1990 AMC 316, 322 (9th Cir. 1989) (seaman's wages); Admiral Cruise Servs., Inc. v. M/V St. Tropez, 524 F. Supp. 2d 1378, 1381, 2008 AMC 661, 664 (S.D. Fla. 2007) (crew's wages). Would not the same reasoning apply to charter party claims, supplies, or necessaries?

151 See Edginton, supra note 50, at 12-2.

152 BargeCarib Inc. v. Offshore Supply Ships Inc., 168 F.3d 227, 230, 1999 AMC 1361, 1364 (5th Cir. 1999); E.A.S.T., Inc. of Stamford, Conn. v. M/V Alaia, 876 F.2d 1168, 1174, 1989 AMC 2024, 2032 (5th Cir. 1989).

153 BargeCarib Inc., 168 F.3d at 227, 1999 AMC at 1361; Cardinal Shipping Corp. v. M/S Seisho Maru, 744 F.2d 461, 466, 1985 AMC 2630, 2637 (5th Cir. 1984).

154 Note, however, that under maritime law, providing postarrest necessaries creates no lien. The custodia legis doctrine has long been used to cut short the accrual of a maritime lien while the vessel was in the court's custody. See, e.g., The Astoria v. Anglo-Am. S.S. Agencies, Inc., 281 F. 618, 622 (5th Cir. 1922).

155 See, e.g., U.S. Lines, Inc. v. Am. S.S. Owners Mut. Prot. & Indem. Ass'n (In re U.S. Lines, Inc.), 197 F.3d 631, 641, 2000 AMC 784, 794 (2d Cir. 1999) (stating that a bankruptcy court has discretion whether or not to enforce an arbitration agreement, as long as it "has properly considered the conflicting policies in accordance with law").

156 The power to reject executory contracts and the effect of arbitration clauses in bankruptcy are frequent sources of confusion. See Jason S. Brookner & Monica S. Blacker, The Rejectability of Arbitration Clauses, Am. Bankr. Inst. J., Apr. 2007, at 1.

157 212 B.R. 1, 2 (D. Me. 1997). The district court, on its own motion or on motion of any party, may withdraw the reference for cause, in which event it essentially sits as the bankruptcy court with original jurisdiction. 28 U.S.C. §157(d) (2006). The district court may withdraw the reference regarding an entire bankruptcy case, or may withdraw a particular proceeding while leaving the main bankruptcy case in the bankruptcy court. Such reference withdrawal is rare, but nonetheless leaves the power to take jurisdiction away from the bankruptcy court and place it in the hands of the district court.

158 O'Hara Corp., 212 B.R. at 2-3.

159 203 B.R. 297, 299, 1997 AMC 1880, 1881-82 (D. Alaska 1996).

160 Id., 1997 AMC at 1882.

161 Id.

162 Id. at 298, 1997 AMC at 1881 (citing Ship Mortgage Act, 46 U.S.C. §§ 30101, 31343, 31304(b), 31325(c)).

163 Slay Warehousing Co. v. Modern Boats, Inc. (In re Modern Boats, Inc.), 775 F.2d 619, 620, 1987 AMC 509, 510 (5th Cir. 1985).

164 See A.H. Robins Co. v. Piccinin, 788 F.2d 994, 1015 (4th Cir. 1986).

165 28 U.S.C. §157(d) (2006).

166 Fed. R. Bankr. Proc. 5011; Compton v. Walker (In re Coral Petroleum, Inc.), 249 B.R. 721, 734 (Bankr. S.D. Tex. 2000).

167 See Holland Am. Ins. Co. v. Succession of Roy, 777 F.2d 992, 999 (5th Cir. 1985); In re Coral Petroleum, Inc., 249 B.R. at 734.

168 See Carmel v. Galam (In re Larry's Apartment, L.L.C.), 210 B.R. 469, 472-73 (D. Ariz. 1997); Ponce Marine Farm, Inc. v. Browner (In re Ponce Marine Farm, Inc.), 172 B.R. 722, 724 (D.P.R. 1994); Rushton v. Phila. Forest Prods., Inc. (In re Americana Expressways, Inc.), 161 B.R. 707, 714 (D. Utah 1993); Styler v. Jean Bob, Inc. (In re Concept Clubs Inc.), 154 B.R. 581, 583 (D. Utah 1993).

169 BOUSA, Inc. v. United States (In re Bulk Oil (USA), Inc.), 209 B.R. 29, 30 (S.D.N.Y. 1997) (citations omitted); see 130 Cong. Rec. 6244 (1984) (statement of Rep. Kramer).

170 185 B.R. 25 (E.D. La. 1995).

171 Id. at 27.

172 138 B.R. 314, 1992 AMC 2519 (Bankr. S.D. Ga. 1992), aff'd, 154 B.R. 368, 1993 AMC 2775 (S.D. Ga. 1993).

173 Id. at 318, 1992 AMC at 2523.

174 U.S. Lines, Inc. v. Am. S.S. Mut. Prot. & Indem. Ass'n (In re U.S. Lines, Inc.), 197 F.3d 631, 636, 2000 AMC 784, 788 (2d Cir. 1999).

175 1995 AMC 1322, 1327 (D. Alaska 1991).

176 Id. (quoting Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 54 (1989)).

177 See id. at 1325-27.

178 See O'Hara Corp. v. F/V North Star, 212 B.R. 1, 4 n.3 (D. Me. 1997).

179 Universal Oil Ltd. v. Allfirst Bank (In re Millenium Seacarriers, Inc.) (Millenium I), 419 F.3d 83, 98 (2d Cir. 2005).

180 11 U.S.C. §501 (2006); Fed. R. Bankr. P. 3001; Fed. R. Bankr. P. Official Form 10; Langenkamp v. Culp, 498 U.S. 42, 44-45 (1990); In re Peachtree Lane Assocs., Ltd., 150 F.3d 788, 798-99 (7th Cir. l998); Blackburn-Bliss Trust v. Hudson Shipbuilders, Inc. (In re Hudson Shipbuilders, Inc.), 794 F.2d 1051, 1054 (5th Cir. 1986).

181 See O'Neill v. Cont'l Airlines, Inc. (In re Cont'l Airlines), 928 F.2d 127, 129 (5th Cir. 1991) ("[T]he filing of a proof of claim is analogous to the filing of a complaint in a civil action, with the bankrupt's objection the same as the answer."); Simmons v. Savell (In re Simmons), 765 F.2d 547, 552 (5th Cir. 1985).

182 Tucker Plastics, Inc. v. Pay 'N Pak Stores, Inc. (In re PNP Holdings Corp.), 99 F.3d 910, 911 (9th Cir. 1996).

183 Langenkamp, 498 U.S. at 44; Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 58-59 (1989).

184 405 F.3d 127 (3d Cir. 2005).

185 Id. at 131.

186 Id.

187 28 U.S.C. §157 (2006); 1 Collier on Bankruptcy P3.02(3) (15th ed. 2009).

188 1 Collier on Bankruptcy, supra note 187, P3.02(3).

189 28 U.S.C. 157(b)(5); Stokes v. Se. Hotel Props., Ltd., 877 F. Supp. 986 (W.D.N.C. 1994).

190 28 U.S.C.§157(b)(5); see also A.H. Robins Co. v. Piccinin, 788 F.2d 994, 1015 (4th Cir. 1986) (allowing special venue change and transfer procedures in recognition of the special nature of this case).

191 Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207, 222-23, 1986 AMC 2113, 2124-25 (1986).

192 405 F.3d 127 (3d Cir. 2005).

193 Id. at 128-29 (alteration in original).

194 Superior Crewboats, Inc. v. Primary P&I Underwriters (In re Superior Crewboats, Inc.), 374 F.3d 330, 336, 2004 AMC 1767, 1772 (5th Cir. 2004).

195 11 U.S.C. §521(a)(1) (2006).

196 Id.; see In re Superior Crewboats, 374 F.3d at 333, 2004 AMC at 1768.

197 See 11 U.S.C. §521(a).

198 In re Superior Crewboats, 374 F.3d at 334-35, 2004 AMC at 1769-70.

199 Id.

200 Id.

201 See David Brice Toy, Introduction to the Law of Maritime Liens, 47 Tul. L. Rev. 559, 560 (1973). Maritime liens arise in contract under the Commercial Instruments and Maritime Lien Act (Federal Maritime Lien Act), 46 U.S.C. §31341-31343 (2006), or under the general maritime law.

202 See In re Muma Servs., Inc., 322 B.R. 541, 555 (Bankr. D. Del. 2005).

203 E.g., Perishable Agricultural Commodities Act, 7 U.S.C. §499g-s (2006); Louisiana Oil, Gas, and Water Wells Lien Act, 1995 La. Sess. Law Serv. 962 (West).

204 See 46 U.S.C. §31342; Ambassador Factors, Div. Fleet Factors Corp. v. First Am. Bulk Carrier (In re Topgallant Lines, Inc.), 138 B.R. 314, 1992 AMC 2519 (Bankr. S.D. Ga. 1992), aff'd, 154 B.R. 368, 1993 AMC 2775 (S.D. Ga. 1993).

205 11 U.S.C. §724 (2006).

206 See In re Muma Servs., 322 B.R. at 541.

207 Id.

208 Id. at 545.

209 Id.

210 Id. at 546.

211 Id.; see 46 U.S.C. §§31326(a)-(b) (2006); 11 U.S.C. §363(f) (2006).

212 To compare this result in a Chapter 7 case with the opposite conclusion in a Chapter 11 case, see Hefta v. Official Comm. of Unsecured Creditors (In re Am. Classic Voyages Co.), 405 F.3d 127 (3d Cir. 2005).

213 Id.

214 322 B.R. at 551.

215 Id. at 555.

216 Id. at 551.

217 Id. at 550.

218 Id. at 553.

219 Id. at 554-55.

220 Id. at 556-59.

221 Id. at 559-60.

222 46 U.S.C. §31301 (2006).

223 See Fed. R. Civ. P. A-G (Supplemental Rules for Certain Admiralty and Maritime Claims).

224 See U.S. Dep't of Justice, U.S. Marshals Serv., W. Dist. of Wash., Procedures To Arrest a Vessel, http://www.usmarshals.gov/district/wa-w/admiralty/pdf/admiralty.pdf (last visited Apr. 2, 2009).

225 46 U.S.C. §31326.

226 Id. §31326(b)(1).

227 See U.S. Dep't of Justice, supra note 224.

228 See Varian, supra note 62, at 754.

229 11 U.S.C. §362(a) (2006).

230 See, e.g., Goodpasture, Inc. v. M/V Pollux, 602 F.2d 84, 87, 1979 AMC 2515, 2520 (5th Cir. 1979), aff'd as modified by 688 F.2d 1003 (5th Cir. 1982).

231 46 U.S.C. §31342.

232 Id.

233 See id. §31301(5).

234 N.Y. Dock Co. v. S.S. Poznan, 274 U.S. 117, 122-23, 1927 AMC 723, 727 (l927).

235 Id. at 121-23, 1927 AMC at 726-27.

236 Container Applications Int'l, Inc. v. Lykes Bros. S.S. Co. (In re Container Applications Int'l, Inc.), 233 F.3d 1361, 1366, 2001 AMC 967, 973-74 (11th Cir. 2000).

237 See Fed. R. Bankr. P. 3001-3014.

238 No. 05-10137 (Bankr. E.D. La. Apr. 28, 2006).

239 In re Harbour Lights Marina, Inc. v. Wandstrat, 153 B.R. 781, 783-84, 1994 AMC 606 (S.D. Ohio 1993) (AMC reporter summarizing case) (finding that a barge that was being converted into a floating restaurant, bar, and marina, secured to land by public sewage, water, and electric lines, constituted a vessel within the meaning of the Maritime Commercial Instruments and Liens Act, 46 U.S.C. §31342, but that a creditor was not entitled to a maritime lien).

240 In re Amgam Assocs., 239 B.R. 737, 739 (Bankr. S.D. Miss. 1999).

241 Id. (citing White Constr. Co. v. MRA, Ltd. (In re Biloxi Casino Belle, Inc.), 176 B.R. 427, 433 (Bankr. S.D. Miss. 1995)).

242 See generally The Tulane Admiralty Law Institute Symposium on Admiralty Interface: Bankruptcy v. Maritime Rights, supra note 2.

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