

News & Types: Client Advisories

Hanjin Shipping Now Under U.S. Bankruptcy Protection: Options for Shippers and Intermediaries

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Practices: Commercial, Competition & Trade, Litigation

Yesterday afternoon in Newark, New Jersey, Judge John K. Sherwood of the U.S. Bankruptcy Court granted Hanjin Shipping Co. Ltd.'s request to recognize its Korean bankruptcy case and to provide U.S. bankruptcy protection to its assets and operations within the United States. However, the U.S. Bankruptcy Court's protection is subject to another hearing on Friday to sort out what arrangements can be made among the various stakeholders. Just yesterday, the Tokyo District Court also granted formal recognition of Hanjin's Korean bankruptcy and provided local bankruptcy protections to Hanjin. Creditors of Hanjin are now no longer able to seize Hanjin vessels or other assets within the United States (including U.S. waters). Creditors located within the U.S. will also be barred from seeking the seizure of Hanjin's assets anywhere else in the world.

Hanjin has already reported that various port authorities are requiring cash up front before its vessels can enter ports and berth at terminals. This is because ports are able to refuse vessels where there is a concern that the responsible shipping line will not be able to pay various charges on the vessel or cargo, including towage, pilotage, demurrage, dockage, wharfage, etc. Today, the American Journal of Transportation reported that Hanjin Group will provide 100 billion Korean won (\$90 million) to support the ongoing operations of Hanjin Shipping. The BBC has also reported that the Korean government is considering providing loans to Hanjin for this purpose. Accordingly, there is good reason to believe that Hanjin will be able to assuage port authorities and begin unloading its vessels in U.S. ports.

Until the unloading of Hanjin's containers at their various ports of destination actually gets underway, shippers, consignees, and transportation intermediaries should be mindful of their interconnected positions with respect to the cargo. Sellers and forwarders will need to ensure that they are not exposed to claims for delayed delivery from their buyers and customers, respectively. Hanjin's financial emergency may or may not constitute a *force majeure* event under the terms of the applicable sales and carriage contracts. However, in addition to these relationships, the cargo itself may be subject to liens for unpaid freight as well as liens held by ports, terminal operators, and vessel owners (where vessels are chartered by Hanjin). HP has already formally proposed escrowing the freight it owes for its containers, so that it can obtain the containers' release sooner. Certain shippers and intermediaries may also have direct contractual relationships with Hanjin, which could leave them exposed, particularly where they have agreed to minimum volume commitments.

Where shippers or forwarders cannot avoid exposure under their contracts, they may still have to resort to insurance. Both types of businesses should have arranged for coverage under cargo or legal liability policies. Many Asian insurers continue to utilize the London clauses for marine cargo coverage, at times on the classic SG Form. The London clauses will normally exclude coverage for delays, although insureds may have obtained additional coverage for this risk. The London clauses also require the insured to take affirmative action to assert its rights with bailees holding the cargo. Thus, insureds should be diligent in following the progress of their cargo and asserting their rights throughout this process. Insurance should not be treated as a last resort. Instead, current action is required to maintain the viability of insurance coverage.