masuda funai

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# Emergency Appeal in Hanjin Shipping Case Highlights Disconnect between Bankruptcy and Maritime Law in the United States

9/19/2016

Practices: Commercial, Competition & Trade

A number of towage and bunker suppliers in the Hanjin Shipping Co. Ltd. chapter 15 case have requested the intervention of a district court judge to clarify whether the U.S. Bankruptcy Court has authority to "effectively extinguish[] . . . maritime liens" on chartered vessels. The bankruptcy judge has acted to try to preserve Hanjin's assets and ability to continue its business, as he should do. The case concerns roughly $14 billion worth of cargo afloat or held up in container yards across the world. At least 10 vessels are known to be steaming toward U.S. ports, in addition to the three that have been unloaded in Long Beach and Los Angeles. However, it is probably still the consensus of the federal judiciary that only a federal district court judge, sitting in admiralty, has authority to clear liens off of an arrested vessel. Without the sudden and powerful remedy of foreclosing on maritime liens and selling vessels, surely providers of services at sea, including towage and bunker fuel, will be less willing to service vessels at sea. This notion underpins admiralty proceedings, which serve the interests of maritime creditors, in stark contrast to the goal of bankruptcy law to rehabilitate the debtor.

In the appeal of the Hanjin case, the district court judge will likely be mindful that even the district courts presiding over arrested or attached Hanjin assets or vessels should defer to the bankruptcy judge's automatic stay. However, the precise scope of that stay is being questioned by the marine service providers in the Hanjin case. The service providers can be expected to argue that the stay should not extend to chartered vessels, which are not actually owned by Hanjin, and should not block the perfection of maritime liens for post-perfection provision of services to those vessels. If successful, the service providers' appeal may win them better financial protection for their liens (normally required in both bankruptcy and admiralty cases for release of seized assets or vessels), but also may test the boundaries of maritime and bankruptcy court jurisdiction to enjoin creditor actions against maritime assets.

In the meantime, the emergency appeal may further delay much needed clarification of the bankruptcy judge's order concerning the release of cargo to Beneficial Cargo Owners. On the very day that the bankruptcy judge heard the service providers' request for reconsideration of the current provisional order protecting Hanjin, a group of non-vessel operating common carriers ("NVOCC's") specifically requested both clarification and

extensions of the effect of the court's order. Their concerns include the need to specify that NVOCC's can obtain release of cargo on behalf of their clients, the need for Hanjin to publish the cargo rates necessary to obtain release of cargo, the need to address treatment of empty containers, and the need to extend the release protocols to already landed cargo and export cargo. The provisional order, as written, only provides release protocols for cargo that is unloaded in U.S. ports after September 9. Although the service providers' appeal presents fascinating jurisdictional issues, for cargo owners - perhaps the largest constituency affected by the Hanjin bankruptcy - the possibility of extending the bankruptcy court's current provisional order to more scenarios should be more carefully watched.

For more information about this article, contact Asa W. Markel at 310.630.5900 or via e-mail at amarkel@masudafunai.com.