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The Gap is Closing on Vessel Seizures in the Hanjin Emergency

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The Wall Street Journal has recently observed that if Hanjin Shipping Co. Ltd. fails in its attempts to reorganize and emerge from bankruptcy proceedings in Korea, it would represent the largest container shipping company to date to collapse. In the meantime, its creditors have apparently been active in Chinese, Singaporean, and American ports. At this time, the federal district court in Los Angeles has allowed the arrest of one vessel *(the Montevideo)* on account of unpaid bunkering charges, and is still considering two requests for the attachment of Hanjin's assets on behalf of two owners who charter vessels to Hanjin.

Hanjin's decision to file a chapter 15 ancillary bankruptcy proceeding in the United States this past Friday does not put an automatic freeze on further ship seizures. However, the U.S. Bankruptcy Court judge assigned to that proceeding has indicated that he will consider Hanjin's petition this afternoon, and if granted, the automatic bankruptcy stay will begin protecting Hanjin within the United States (and within U.S. waters). Not much time remains for further creditors to obtain maritime attachments or arrest orders against Hanjin's vessels or other assets.

Beyond the effectiveness of the automatic bankruptcy stay, not much is else is so settled in the law concerning bankruptcy shipping companies. The Second Circuit's 2005 decision in In *re Millenium Seacarriers, Inc*. points out the continuing uncertainty in U.S. law concerning the boundary between exclusive bankruptcy jurisdiction and exclusive maritime jurisdiction. As Judge Sotomayor (as she then was) observed in *Millenium Seacarriers*, while a bankruptcy judge can preside over the distribution of maritime assets, only a federal district court judge sitting in admiralty can dispose of a vessel by judicial sale, free and clear of maritime liens. In the meantime, there seems little disagreement that judges sitting in admiralty recognize the paramount impact of the automatic bankruptcy stay. Thus, once an automatic stay is instituted for Hanjin, there can be no more vessel seizures in U.S. waters.

If any maritime attachment has been perfected prior to entry of the automatic stay, there is precedent in the form of last year's In *re Daebo International Shipping Co*. decision, in which the bankruptcy judge vacated the attachment without requiring the debtor to post any security, in part on the basis that the Korean bankruptcy judge's order in that case was meant to have worldwide effect. In the current Hanjin petition before the U.S. Bankruptcy Court, part of Hanjin's submission is that the Korean court's protection is worldwide and is merely being confirmed by the use of U.S. chapter 15 proceedings. Thus, there is a good chance that attachments obtained on or after September 1 will be vacated by the U.S. Bankruptcy Court.

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There is much less chance that the arrest of the *Montevideo* will be summarily vacated without the obligation to provide "protection" to the arresting lienholder. The bunker supplier who arrested the Montevideo will claim the existence of a "maritime lien" for the supply of bunker fuel, since this was a prerequisite to the arrest itself. Maritime liens create great headaches for bankruptcy judges, as they do not fit within the usual definitions or categories normally provided for liens in bankruptcy (or much else in non-admiralty matters). There is precedent in bankruptcy and admiralty court decisions for allowing the bankruptcy judge to release an arrested vessel upon the payment of adequate security for the release of collateral, but also for the bankruptcy court's reliance on the arresting admiralty court for ultimate disposal of the vessel. Whether it is the bankruptcy judge in Newark or the district court judge in Los Angeles who ultimately has authority to release or auction the vessel will be sorted out in the coming weeks and months.

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