

News & Types: Client Advisories

U.S. Federal Judge Refuses to Alter Bankruptcy Orders Protecting Hanjin Shipping Co. Ltd.

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Practices: Commercial, Competition & Trade, Litigation

RECENT EVENTS

The federal district court in New Jersey recently denied an appeal by maritime creditors of Hanjin to lift bankruptcy protections and allow arrest of Hanjin's vessels in and near U.S. ports. The federal district court judge agreed with the bankruptcy judge's grant of blanket protection to Hanjin and directed creditors of Hanjin to file claims in the Korean bankruptcy proceeding. Those claims are now due by October 25, 2016 in the Korean proceedings, according to an amended order issued by the Korean judge.

Hanjin reported to the bankruptcy judge on Thursday (September 22, 2016) that it was not relying on the court's protocol for cargo release. Instead, Hanjin claimed to have paid cash to the relevant terminal operators at U.S. ports where Hanjin's containers were unloaded. Hanjin stated that it will be issuing amended or re-rated bills of lading to its customers, with charges listed only for the time up to the point the containers reached their container yards after unloading in the U.S. Hanjin added that it had reports from customers of price gouging by railways, marine terminals, and lessors of the actual containers. These reports have been corroborated by actual cargo owners in multiple ports in the U.S.

As we previously reported, a number of cargo owners have asked that the bankruptcy court hold cargo handlers to the same rates they had agreed upon with Hanjin. Cargo owners have also asked for a freeze on demurrage charges on containers that Hanjin or the terminal operators refused to take back after cargo was devanned. The bankruptcy court has not ruled on the cargo owners' motion, although service providers in the ports have objected to the bankruptcy court exercising jurisdiction over the rates they charge to Hanjin customers. The cargo owners' requests to expand the court's order contradicts the position taken by Hanjin that it will not be using the cargo release protocols in the court's order. Certainly, if the court expands the scope of the order, it will be more advantageous to cargo owners who still need to obtain release of cargo.

There have been numerous reports in the media to the effect that the Korean bankruptcy judge has ordered Hanjin to start liquidating its vessels and returning chartered vessels to their owners. We have been in contact with leading shipping lawyers in Korea who report that, in fact, Hanjin has simply exercised its right to terminate the charters on the vessels (similar to the rejection of a lease in an American bankruptcy proceeding). However, there are still reports of port authorities in Asia requiring Hanjin to unload all cargo and then leave port as soon as possible. If this is true, it may affect certain shipments destined for U.S. ports.

NEW ISSUES FOR CARGO OWNERS

Hanjin reports that its vessel schedules have been delayed because of the refusal earlier this month of numerous ports to allow its vessels to berth. This will result in substantial delays to shipments that have previously been reported as in transit to ports in the U.S. It is not clear to us whether these delays are truly the result of events earlier this month. A number of these vessels will be rerouted to ports in Korea. If shipments are time sensitive, shippers should consider attempting to have the cargo unloaded in Korea and delivered to another ocean carrier for shipment to the U.S. It may be that cargo will be unloaded in any case, if it is currently aboard a chartered vessel, since those vessels are set to be returned to their owners.

Hanjin has stated on the record that it will not be utilizing the Release Agreements authorized by the bankruptcy court's provisional order to release cargo to its owners. Instead, cargo owners will be required to pay freight based upon updated bills of lading from Hanjin, and will be left to negotiate on their own with container yards and terminal operators for the release of cargo. So far, neither the bankruptcy court nor the Federal Maritime Commission have stepped in to police the rates that service providers are charging for the release of Hanjin containers to cargo owners. However, the Commission is encouraging shippers and consignees to report illegal conduct by cargo handlers who are regulated by the Commission.

We will continue to monitor the situation with Hanjin Shipping and update you accordingly.