POTENTIAL RULE B KILLERS

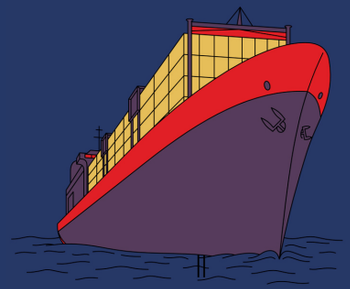
Despite some of the more dire predictions, the Second Circuit's rulings in **Consub Delaware** and **STX Pan Ocean** have left the remedy of Rule B attachments relatively unscathed. However, there are always new threats on the horizon, and below are a few of the challenges to Rule B currently on appeal:

THE SHIPPING CORPORATION OF INDIA LTD. v. JALDHI OVERSEAS PTE LTD.

The issue on appeal is whether Rule B permits the attachment of funds transfers being sent for the benefit of a defendant. In **Aqua Stoli Shipping**, the Second Circuit stated that Rule B applied to funds transfers both originating from and being sent to the defendant. However, **Consub Delaware** (in a footnote) left open this issue. Oral argument was held in early May and a decision is expected shortly. If the District Court decision is affirmed, then maritime creditors would only be able to attach funds transfers being sent by defendants, minimizing the usefulness of the remedy.

MUR SHIPPING B.V. v. RTI LIMITED

The focus of this appeal is whether Rule B actions violate the Due Process Clause of the US Constitution, and if so, whether maritime creditors ought to be required to show at the outset that the foreign defendant has sufficient minimum contacts with the US to render it fair for the court to assert jurisdiction over them. This argument was spawned by the Second Circuit's decision in **Porina v. Marward Shipping Co.** finding that there was no jurisdiction over a shipowner who only had unintentional contacts with the US. The few District Courts who have heard this argument have rejected it, but one District Court certified the question for appeal itself this past February.



LYONS & FLOOD, LLP

65 West 36th Street, 7th Floor
New York, NY 10018
Phone (212) 594-2400
Fax (212) 594-4589

Executive Summary

DEVELOPMENTS IN RULE B MARITIME ATTACHMENTS

LYONS & FLOOD, LLP

65 West 36th Street, 7th Floor
New York, NY 10018
Phone (212) 594-2400
Fax (212) 594-4589

RULE B AND THE ECONOMIC DOWNTURN

It has become common knowledge among the maritime community that Rule B filings saw a tremendous surge as the dry bulk market collapsed this past Autumn, leading to widespread defaults and the liquidation of a number of major players. According to the Clearing House (the operator of CHIPS which has a 96% market share over domestic and international USD payments), between October 1, 2008, and January 31, 2009, maritime creditors filed nearly 1,000 lawsuits seeking to attach a staggering $1.35 billion in assets, constituting one-third of all civil lawsuits filed in the Southern District of New York.

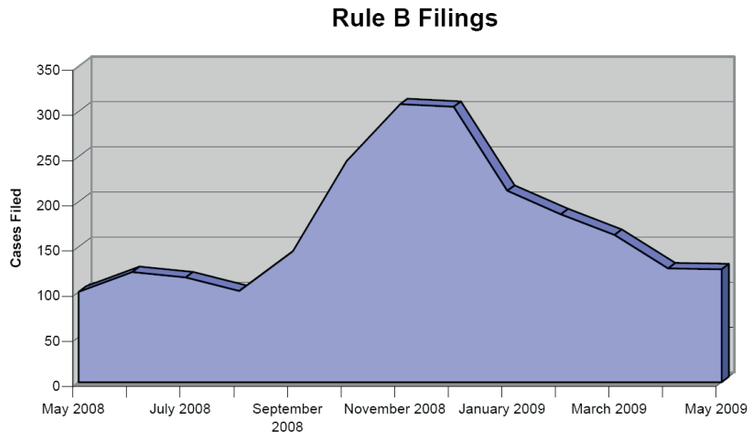
Shocking statistics aside, a look at the hard numbers provides some interesting observations. As the chart to the right demonstrates, beginning in January of 2009, the number of Rule B filings began to decline and has arguably reached its normal pattern of moderate growth over time.

STX PAN OCEAN V. GLORY WEALTH

One reason for the decline may have been the Second Circuit's decision in **STX Pan Ocean (UK) Co., Ltd. v. Glory Wealth Shipping Pte Ltd.**, which confirmed the effectiveness of an already increasingly popular strategy to avoid maritime attachments – registering to do business in New York. Given the relatively low costs and hassle involved, foreign maritime debtors have registered in droves to prevent their funds transfers from being attached.

CHAPTER 15 ANCILLARY PROCEEDINGS

Another factor in stemming the tide of Rule B filings is the effectiveness of using ancillary proceedings filed under Chapter 15 of the US Bankruptcy Code to stay or vacate



Rule B attachments filed against foreign creditors in liquidation. While Chapter 15 has been on the books since 2005, it was seldom utilized. It authorizes a US Bankruptcy Court to recognize a foreign bankruptcy and grant relief to assist the foreign debtor in liquidation by vacating maritime attachments and turning over the funds to be administered in the foreign bankruptcy proceeding.

MODEL RULE B ORDER

Arguably the greatest contributing factor in the decline in the success rate of Rule B filings, however, was the new burdens placed by overwhelmed District Court judges on maritime creditors seeking attachment orders. These additional requirements (which varied according to the individual judge assigned) culminated in the issuance of a Model Rule B Order by the Board of Judges of the United States District Court for the Southern District of New York this past April. The salient features of the Model Rule B Order are:

1. A built-in expiration date.
If no funds are attached within 60 or 90 days (at the judge's option) from the issuance of the attachment order, it will expire automatically and the case will be dismissed without prejudice. Moreover, the Model Order mandates dismissal if the underlying arbitration or litigation on the merits for which security is sought is not commenced within 45 days of the issuance of the attachment order. These deadlines can be extended on application.

2. Limits on the property that can be attached.
Judges now have the option to limit attachment to funds transfers originating from defendants only, or to permit traditional attachment of funds transfers either originated or being sent for the benefit of defendants.

3. Limitations on service of the attachment order.
Judges may also now direct that the initial service of the attachment order be made by the US Marshal's Service, rather than permitting maritime attorneys to use private service companies. Further, the Model Order gives garnishee banks the option of declining to accept service via electronic means and also gives garnishee banks the right to charge a "reasonable" fee for processing an attachment order. At least one bank has already taken advantage of this situation by assessing a $300 fee per attachment order processed.

4. Requirement to show property in the District.
Some judges have lately begun refusing to issue attachment orders unless maritime creditors can provide evidence that a maritime debtor will be transferring USD funds through New York banks in the near future, which is often an insurmountable burden.

SOME GOOD NEWS

Despite the chilly reception some judges have given to maritime creditors there are some hopeful signs. For example, in **Kalafrana Shipping Ltd. v. Sea Gull Shipping Co. Ltd.**, contrary to the longstanding rule that there is no maritime jurisdiction over the breach of a contract for the sale of a vessel, the court found that a mixed contract for the sale and repair of a vessel was within the court's admiralty jurisdiction. Thus, the scope of maritime jurisdiction may be expanding, at least in the case of contracts providing for a "mix" of maritime and non-maritime obligations.