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Cargo Interests Win Partial Victory in Hanjin U.S. Bankruptcy Hearing

On September 9, 2016, the U.S. Bankruptcy Court for the District of New Jersey issued a two-part ruling that provides partial relief to cargo interests, including non-vessel operating common carriers (NVOCCs), impacted by Hanjin Shipping Co.'s Chapter 15 bankruptcy filing. (Read our previous alert about Hanjin's bankruptcy filings in the United States and South Korea.) The salient issue for the court was: Could the cargo interests deduct payments made to third parties for Hanjin debt in order to have their cargo released from amounts that Hanjin claimed against the cargo interests?

Creditors' Protocol Established

Part 1 of the court's order basically continues the bankruptcy court's September 6, 2016, order that issued a blanket stay of collection or enforcement efforts against Hanjin or its assets in the U.S. The court expressly lifted its stay on Hanjin ships leaving U.S. waters. Further, the order provides that Hanjin vessels are free to come and go at U.S. ports and not be subject to arrest or seizure.

Exhibit A of Part 2 of the order establishes a protocol for creditors, including cargo interests, to claim their cargo from Hanjin or third parties such as terminal agents, warehousemen or others. The protocol at this time, however, is limited to cargo "yet to be berthed and worked by the terminal and not already inland ..." The net effect is that Hanjin cargo that was discharged prior to the order, or at an inland rail ramp or another third-party location, is not subject to this protocol. This means that any amounts paid to third parties for release of this cargo cannot be set off from any other amounts that may be owed to Hanjin.

Another provision of the protocol is that Hanjin must release cargo in its possession when payment for the charges associated with that cargo is

tendered, and Hanjin cannot require payment of charges for other shipments as a condition of the release of the cargo in question.

Both parts of the order will be in force until the bankruptcy court's next hearing, which is expected to be scheduled after September 22, 2016.

Additional Updates

Hanjin announced that a \$100 million loan commitment from Korean Air Lines that was announced at the last hearing had been withdrawn.

The South Korean Bankruptcy Court approved financing of \$10 million to specifically cover the costs of unloading four Hanjin vessels – Greece, Boston, Jungil and Gdynia – scheduled to arrive in U.S. ports in the next few days. This raises the possibility that any other vessels scheduled for U.S. deliveries will not have arrest or seizure protection and may not call at U.S. ports for discharge. Shippers might expect even greater costs or losses associated with decisions made on where to discharge this cargo. The ship Hanjin Montevideo is not subject to the terms of this order and will be the subject of a separate court order.

The South Korean Bankruptcy Court has allowed Hanjin's rejection of the following chassis and container leases:

Chassis – Flexi-Van and TRAC Lease

Containers – Blue Sky (BSIU), SeaCube (SECU), Textainer and CAI

The above may or may not provide solutions as to where to return subject chassis and containers upon release and unloading of cargo. This is an issue that still needs resolution, but our guess is that the lessors will want to make arrangements to get back their equipment.

What This Means to You

Based on communications with creditors' counsel, we expect that the protocol for already-landed containers will be essentially the same as the one discussed here for vessels that have not yet called at a U.S. port. That is, if the ocean freight due to debtor is paid or has previously been paid, the cargo owners can pay third-party charges directly, receiving an offset against obligations due to debtor. We expect that either a stipulation of the parties or motion by the cargo owners group to adopt such a protocol will be filed soon in the New Jersey bankruptcy court.

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We strongly suggest that any payments to third parties for release of cargo be done pursuant to release agreements with averments that the prices being paid are “based on reasonable, customary or agreed upon rates for any services provided,” as required by the order.

Contact Us

For more information on how the Hanjin bankruptcy may affect your business, contact Carlos Rodriguez, Benjamin Mann, or another member of Husch Blackwell’s Technology, Manufacturing & Transportation team.