



AMERICAN
BANKRUPTCY
INSTITUTE

2017 Cross-Border Insolvency Program

Issues in Cross-Border Insolvencies/Admiralty and Shipping

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SHIPPING COMPANY RESTRUCTURINGS

Some of the cases and debt involved:

Company	Debt (US\$m)	Country	Proceeding
Hanjin Shipping Co., Ltd.	5,500	Korea	Korea (US chapter 15) (2016)
CMA CGM	4,600	France	Out-of-court restructuring (2013)
Overseas Shipholding Group	2,670	USA	US chapter 11 (2012)
Berlian Laju Tankers	2,610	Indonesia	Indonesia (US chapter 15) (2013)
Korea Line	2,058	Korea	Korea (US chapter 15) (2011)
Sanko Steamship	1,950	Japan	Japan (US chapter 15) (2012)
Torm	1,793	Denmark	Out-of-court restructuring (2012)
Frontline	1,786	Bermuda	Out-of-court restructuring (2012)
Rickmers Holding AG	1,500	Germany	Germany (2017)
Genco	1,500	USA	US chapter 11 (2014)
TMT Group	1,460	Taiwan	US chapter 11 (2013)
General Maritime Corporation	1,410	USA	US chapter 11 (2011)
Excel Maritime Carriers	1,400	Greece	US chapter 11 (2013)
Eagle Bulk Shipping	1,150	USA	US chapter 11 (2014)
Delulemar Compagnia di Navigazione	1,110	Italy	Italy (2012)
Dalichi Chuo Kisen Kaisha	1,060	Japan	Japan (US chapter 15) (2015)
Tolosa Limited	1,052	Bermuda	US chapter 11 (2017)
Elitzen Chemica	905	Norway	Out-of-court restructuring (2013)
Delulemar Shipping	643	Italy	Italy (2012)
PT Arpeni Pratama Ocean Line	630	Indonesia	Indonesia (US chapter 15) (2012)
New Lead Holdings	578	Greece	Out-of-court restructuring (2012)
Omega Navigation Enterprises	360	Greece	US chapter 11 (2011)
Samsun Logix Corp.	360	Korea	Korea (US chapter 15) (2009, 2015)
Primorsk International Shipping Limited	357	Cyprus	US chapter 11 (2016)
PT Humpuss Intermoda Transportasi	312	Indonesia	Out-of-court restructuring (2012)
Marco Polo Seatrade	210	Netherlands	US chapter 11 (2011)
TBS International	200	USA	US chapter 11 (2012)
Global Maritime Investments Cyprus Ltd.	170-250	Cyprus	US chapter 11 (2015)
Daebio International Shipping Co. Ltd.	100-500	Korea	Korea (US chapter 15) (2015)

WHAT ARE THE CHALLENGES?

- Rapid decline in asset values because of significant overcapacity and dramatic decline in demand
- Mobile assets
- Creditor friendly legal regimes
- Lender distress

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Asset values

- Significant demand prior to 2008 drove up orders for new vessels
- Worldwide vessel inventory is inflated by overproduction and shipbuilding orders that are not consistent with demand
- Worldwide economic growth declines during 2008 and after

Some rebound this year

- Loss of Hanjin
- New orders and capacity have fallen
- Some consolidation

But uncertainty as to timing and magnitude of recovery

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NATURE AND STRUCTURE OF THE BUSINESS

These are global businesses with complex capital structures

- Multiple SPVs
- Diverse creditor groups
- Intercreditor issues
- Harder to centralize a rehabilitation effort

The assets are mobile and affected by the laws of multiple jurisdictions

- Maritime laws are generally predisposed to prompt recoveries for creditors rather than providing a breathing spell to effect a restructuring
- Secret liens for “necessaries” including fuel, maintenance, repairs, wages, personal injury claims

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Lender distress

- Most ship finance done by European banks
- As shipping industry declines, European banking sector faces regulatory pressure and need to reduce risk

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MOST RELEVANT JURISDICTIONS

- Major flags – comprising about 43% of world merchant fleet tonnage (mid 2016)
 - Panama
 - Liberia
 - Marshall Islands
- “Control” countries with 57% of world tonnage (mid 2016)
 - Greece (19.5%)
 - Japan (14.1%)
 - China (12.0%)
 - Germany (6.8%)
 - South Korea (4.7%)

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IS CHAPTER 11 EFFECTIVE FOR THIS INDUSTRY?

World-wide automatic stay

–How effective is this in practice?

Ability to make critical vendor payments

–Do all foreign suppliers have to be paid?

–Can trade be impaired?

Management control

Contract rejection

Use of cash collateral and availability of DIP financing

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Limits of Bankruptcy Court jurisdiction (*Stern v. Marshall* issues)

- Sales
- Release of liens
- Ranking mortgages
- Claims bar dates

IS CHAPTER 15 EFFECTIVE?

What are the outer limits of the stay?

- protects assets within the territorial jurisdiction of the US
- time charter interests – *Sanko Steamship*
- acts of foreign counterparties under foreign law contracts affecting property in the US – *NewSat*

Is DIP financing available?

What does compliance with section 363 mean in the chapter 15 context?

What does “sufficiently protected” mean in section 1522(a)?

What are the limits of comity?

Is jurisdiction broader in chapter 15?

- In re Metcalfe & Mansfield* and *In re Sino Forest*

MOVING TO GREENER PASTURES

Transferring COMI to implement a restructuring

Ocean Rig UDW Inc.

- Offshore deep water drilling service
 - Incorporated in Marshall Islands in 2007
 - Parent company migrated to Cayman in 2016
 - Subsidiaries remained Marshall Island companies but registered in Cayman as foreign companies and had Cayman bank accounts
 - Cayman winding up petitions filed March 2017
 - Chapter 15 followed
 - Judge Glenn noted that Marshall Islands does not have a reorganization law but Cayman does and concluded that COMI shift was “for proper purposes to facilitate a value maximizing restructuring”
- Is this forum shopping, “good” forum shopping, or restructuring?

Other examples

Schefenaker moved from Germany to England to implement Company Voluntary Arrangement which was enforced via Chapter 15

Suntech - provisional liquidators activities in Cayman were sufficient to establish COMI in Cayman, despite the fact that the company conducted no business activities there prior to the commencement of the company's winding up proceedings

- had control over the company's assets, business and legal proceedings
- met with employees and creditors
- changed the company's address for SEC filings and directed creditors to send notices to JPLs in Cayman
- appointed a Cayman resident director and held board meetings there

Hellas Telecommunications

- Luxemburg registration but English COMI
 - New UK corporate general partner added
 - New head office in London
 - Debtor registered in England and Wales as a foreign company
 - Notices of change of address sent to banks and bondholders

- How significant is the distinction between “foreign main” and “nonmain” proceedings?

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