

Cross Border Issues in case of Container Carrier's Insolvency



Wook Chung
Montgomery McCracken

Two Main Topics

1. Cross Border Issues

- Foreign Recognition
- Nuances for Shipping Industry

2. Issues for Going Concern

- Practical Legal Issues
- Nuances for Shipping Industry



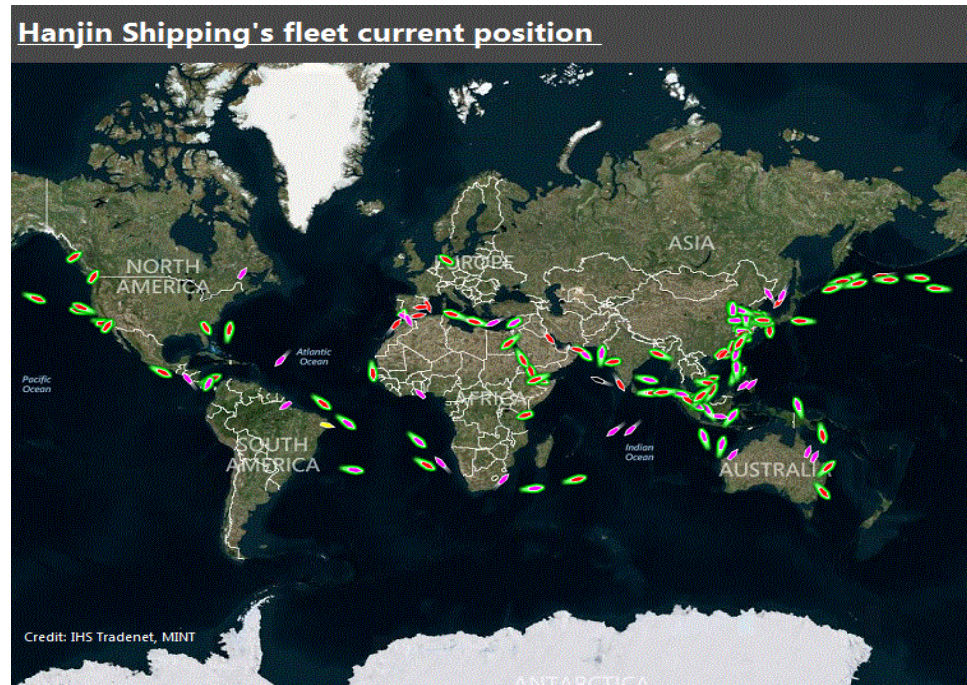
Cross Border Insolvency - Process

- Initial Recognition (KOR)
 - Korea Bankruptcy Law (DRBA): Automatic Stay + Receiver
 - Must file your claim in Korea Court / in Korean form
- Foreign Proceeding (US)
 - Motions for Ch.15 + Stay Relief
 - Receiver in KOR v.
Foreign Rep. in US (local counsel)
 - Different time/ zone/ culture
 - US ‘Court of Equity’



Cross Border Insolvency – for Shipping Industry

- No New Cargo
- Oligopoly Vendors
- Role of Insurance/P&I
- Capital Intensive
- Legal Actions in Non-Foreign Recognition places (China).
- Bankruptcy Protection in/near US (Canada, Panama)



Practical Lessons – Bankruptcy Law

- General Purpose - to avoid the operational interruption & to avoid legal actions for orderly process for reorg.
 - Room for Arguments
- Creditors – Shippers v. Vendors:
 - No Adequate Protection
- Service Contract termination
 - Ipso Facto
 - Issue of Termination



"If you want a speedy trial, why do you keep objecting?"

Legal Lessons – for Shipping Industry

- Insufficiency of Emergency Fund Plan
 - ‘3 things you should do...’
- Maritime Lien v. Possessory Lien v. Title Lien.
- Impact of Termination with Trickle-Down effect:
 - EQ Lessor – trespass claim
 - Rail/Trucker/Terminal - possessory lien
- Vessel Return Time & Place
 - Relationship Still Important



Bonus –

Legal Issues for Harvey and Irma

- Facts:
 - Wind Speed – Naples (130mph(215 kmh); Miami (99); Jax (75)
 - Adequate warning (YES to foreseeability)
- Issues:
 - Liability for cargo damage (delay and non-delivery)
 - Liability for cost & expenses of rehandling/high trucking fees
- Claims:
 - Foreseeability v. Appropriate & Reasonable Protection
 - Shipper – cargo damage; delay & non-delivery claim
 - Terminal – storage charges; property damage; injury
 - Ocean Carrier – EQ damage; per diem; dem/det
 - Inland Carrier – dem/det; warehouse claim; cargo damage



JOC.com (9/8/2017)

Force Majeure Issues for Ocean Carriers

- Terminal
 - FM clause – ‘tidal wave, wind.., Act of God.’
 - Impossibility / Impracticability – issue of equity
- Carrier
 - Re-using Terminal’s defense but still face terminals’ claim to pass through the terminal charges
 - Det/dem claim – completing the service at the original rate
- Federal Maritime Commission
 - Protecting the shippers and trade organizations (fairness)
 - Official disapproval of ocean carriers lien clause
 - No detention and demurrage in case delay (eg. SB 45).

Thank you!