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Maritime Attachment And Civil Practice

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Southern District Judge Richard J. Holwell's recent decision vacating a maritime attachment in *Hannah Bros. v. OSK Mktg. & Communications Inc.* (NYLJ, May 4, pages 24 and 25) contains, in dictum, a one-sided critique of the Second Circuit's decision in *Winter Storm Shipping, Ltd. v. TPI*, 310 F.3d 263 (2d Cir. 2002), cert. denied, 539 U.S. 927 (2003). In *Winter Storm*, the court upheld the right of maritime plaintiffs to attach funds transferred via international electronic fund transfer (EFT) through intermediary banks located in the United States. International transactions denominated in dollars are often routed through United States banks to arrange for currency conversions. For obvious reasons, a significant amount of EFT traffic passes through New York. *Winter Storm* has led to a significant increase in maritime attachment proceedings in this district.

In *Hannah*, the district court claimed that the "conventional wisdom in this district" is that *Winter Storm* merits reconsideration by the Second Circuit. This is certainly not the view of a substantial part of the maritime bar. Federal courts exercising admiralty jurisdiction have always had inherent and broad powers to attach assets in order to gain jurisdiction over absent defendants and to assure satisfaction of judgments. *Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd.*, 460 F.3d 434, 437-438 (2d Cir. 2006). Maritime attachments, and the procedures surrounding them, have unique characteristics which evolved because the transitory nature of vessels and goods involved in maritime transactions makes it generally more difficult for parties to maritime disputes to find property belonging to other parties than is the case in traditional civil actions. *Id.*, p. 443.

For these reasons, the Federal Rules governing maritime attachments provide a quick and streamlined process to freeze assets and provide security for the maritime claimant. Because of the commercial importance of the ports of New York, there is, in particular, a long history of maritime attachments in the federal courts of the Second Circuit dating to the mid-19th century. *Id.*, pp. 439-440.

The availability of maritime attachments has proven particularly important in the last year due to the deterioration of the global economy and the concomitant decrease in the demand for maritime services and increase in defaults under maritime contracts.

While the district court was correct in *Hannah* in pointing out that maritime attachments are subject to abuse (as is all judicial process), the Federal Rules provide safeguards against abuse, including the discretionary requirement that security be posted by the claimant or any other party, allowing for the release of the attached assets upon posting of a special bond and assuring a "prompt hearing" at the request of any party having an interest in the attached property.

Indeed, the district court in the *Hannah* decision conceded that the attachment should never have been granted in the first instance, since the complaint failed to set forth sufficient allegations to support the awarding of an attachment. While the court acknowledged that it "shared responsibility for the wrongful attachment," it seemed to place primary blame on the Second Circuit, even though the attachment was not mandated by *Winter Storm* or its progeny.

A significant body of case law has developed in recent years in this district regarding maritime attachments of EFTs and the procedures governing issuance of such attachments. There have also been extensive informal discussions involving the maritime bar, judges of the district court, and the banking community regarding efforts to standardize maritime attachment practice. The Second Circuit has continued to adhere to *Winter Storm*, even in the face of appeals and requests for en banc review by litigants and bank amici. The district court's criticism of *Winter Storm* does not take into account the unique history and policies underlying maritime attachments, as well as the evolutionary process at work in this district.

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