



# LA Marine Charterparty bulletin

July 2009

## News

LA Marine are taking part in the Sixth Marine Industry Regatta on 14th and 15th July. There is a charity focus to the event to raise valuable funds for the John Merrick Sailing Trust. The teams start as Sunsail's headquarters in the Port Solent and great things are expected of LA Marine's entry!

LA Marine are hosting a presentation on the impact of the Rotterdam Rules (if they ever get ratified). The presentation will be from the London office on 21st July 2009 to be given by Nigel Jacobs Q.C. of Quadrant Chambers.

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Previous copies of LA Marine's logistics bulletin and commercial shipping bulletin are available from [www.la-marine.co.uk](http://www.la-marine.co.uk)

## Rule B : A change in procedure

Rule B, refers to Rule B of the Supplemental Admiralty Rules for Certain Admiralty & Maritime Claims of the Federal Rules of Civil Procedure ("Rule B"). Rule B is irregular to US law as a Claimant can acquire an order of prejudgment attachment of a Defendant's property on an ex parte basis. The procedure is available to obtain security in aid of litigation or arbitration.

There is a substantial volume of dollar denominated e-fund transfers passing through New York banks each day. It is possible to obtain an order from a Federal Judge in New York to direct the clearing banks in NYC to seize any electronic fund transfers in the name of a non resident debtor & that are being routed through financial institutions in NYC on their way from one overseas bank to another. That is, provided that the underlying claim is maritime in nature.

Rule B proceedings, however, are not as simple to obtain & maintain as before. In the last 6 months the standards for obtaining & maintaining a Rule B attachment have tightened up. This is in response to the flood of filings that followed the collapse of the freight & hire markets.

Judges began instituting their own procedural hurdles to Rule B applications. The Chief Judge of the Southern District of New York appointed an ad hoc committee of Judges to meet with members of the maritime & banking bar to discuss Rule B procedures.

After receiving submissions a model Rule B order was produced. They note that they "expected" these revised orders to be submitted with every application. The Order contains several optional provisions which, if selected by the Judge, effectively eviscerate a Rule B. Many Judges are using the model order, but some are not. Some are selecting the problematic optional provisions, but others are not. Uniformity has not been achieved!

The Order contains a phrase stating that the applying attorney has, in an affidavit, satisfied the court that the defendant will have assets passing through the banking system in the near future. Several Judges have made it clear that it is not enough to allege that the defendant engages in international transactions in U.S. dollars. Therefore, in making an application you need to set forth a reasonable belief that the Defendant will have assets passing through the banking system.

The model order of attachment issued provides that it will automatically expire if the claimant does not confirm within 45 days that arbitration or proceedings have been commenced. The model order authorises garnishee banks to charge a "reasonable fee" for processing an attachment, to be paid by the plaintiff. Citibank announced a fee of \$300 per attachment, & other banks are expected to follow suit.

It is for the banks to decide whether they will treat service of the PMAG once a day as being effective all day. If a garnishee bank is unwilling to treat service once a day as being effective all day, then the plaintiff's ability to attach assets is severely limited.

The model order does not require banks to accept e-mail or fax service of the Process of Maritime Attachment & Garnishment ("PMAG") & several have already announced that they will only accept daily service by personal delivery of the PMAG to the bank. The model order gives the Judge the option of ordering that all service on the banks must be made by a U.S. Marshal, if this happens you will have to have consider the potential costs that will be involved & you may have to limit the number of garnishee banks you serve.

All of these procedural changes will impact of the cost & effectiveness of the procedure.

*Siobhan Creely*