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Unconventional (?) Arrests & Seizures

SHIPARRESTED.COM
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*Oh beautiful
magnolia, you're
blossoming
again!*

"Magnolia" / WM Wismer

Securing Maritime Claims: Ships Arrest and other possibilities

Ship arrest under English law and other systems. Bunkers?

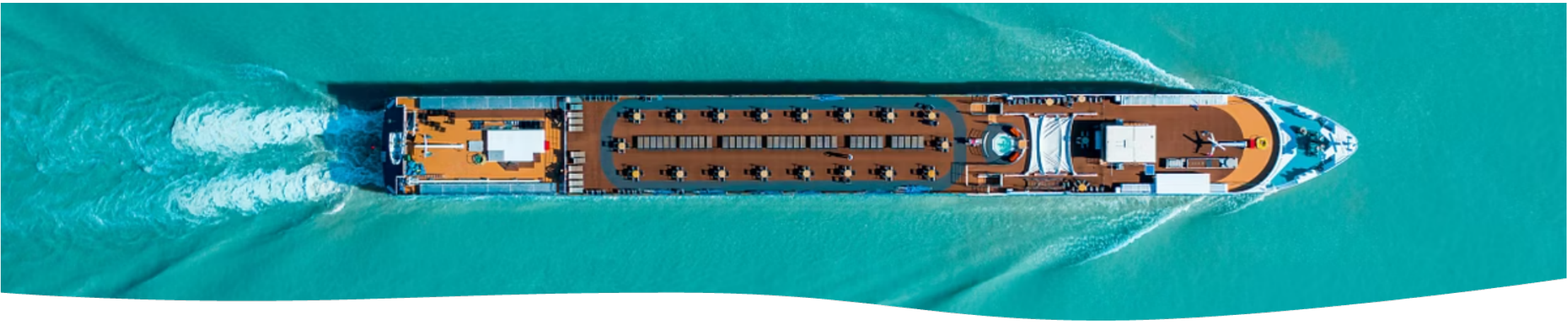


Rule B attachment in US admiralty law







The arrest of rights under a B/ L under Greek law





Security

-  Arresting ships provides security for the claim.
-  In jurisdictions with easy ship arrests, sometimes a call to a club can suffice.
-  What about claims against Defendants without ships, such as Charterers or one-ship companies?
-  We explore alternative security methods where no ship is available for arrest.

Claims with security



Ship Arrests



Security

Jurisdiction

No security?





Rule B Attachments: The Rise and Fall (2002 – 2009)

The Golden Era

Rule B attachment dominated maritime claims, with 98% of USD transactions passing through NY banks (*Winter Storm*).



The 2009 Downfall

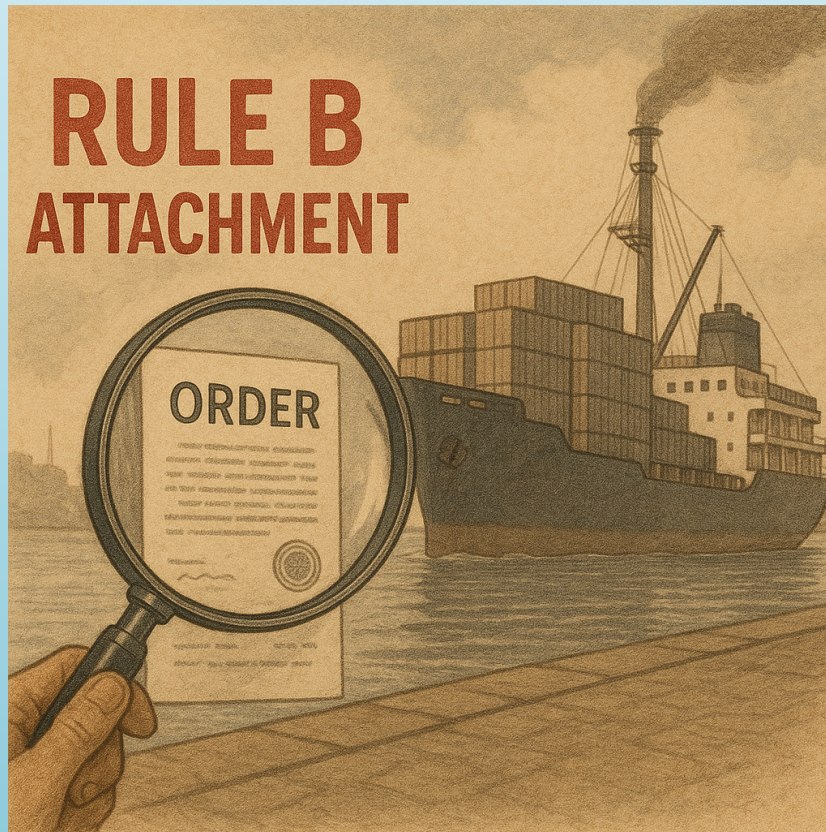
The 2009 Second Circuit decision drastically limited Rule B by restricting attachments to assets physically in jurisdiction (*Jaldhi*).



The Challenge

Anti-terrorist measures post-9/11 improved identification of transaction parties but delayed payment speeds.





Rule B

Arresting bunkers?



Arrest of Bunkers

Seizure as Security

As bunkers are Charterers' property, they can be seized to provide security.

Challenges of Location

Locating ships with sufficient bunkers is difficult and timing is critical.

Offloading Alternatives

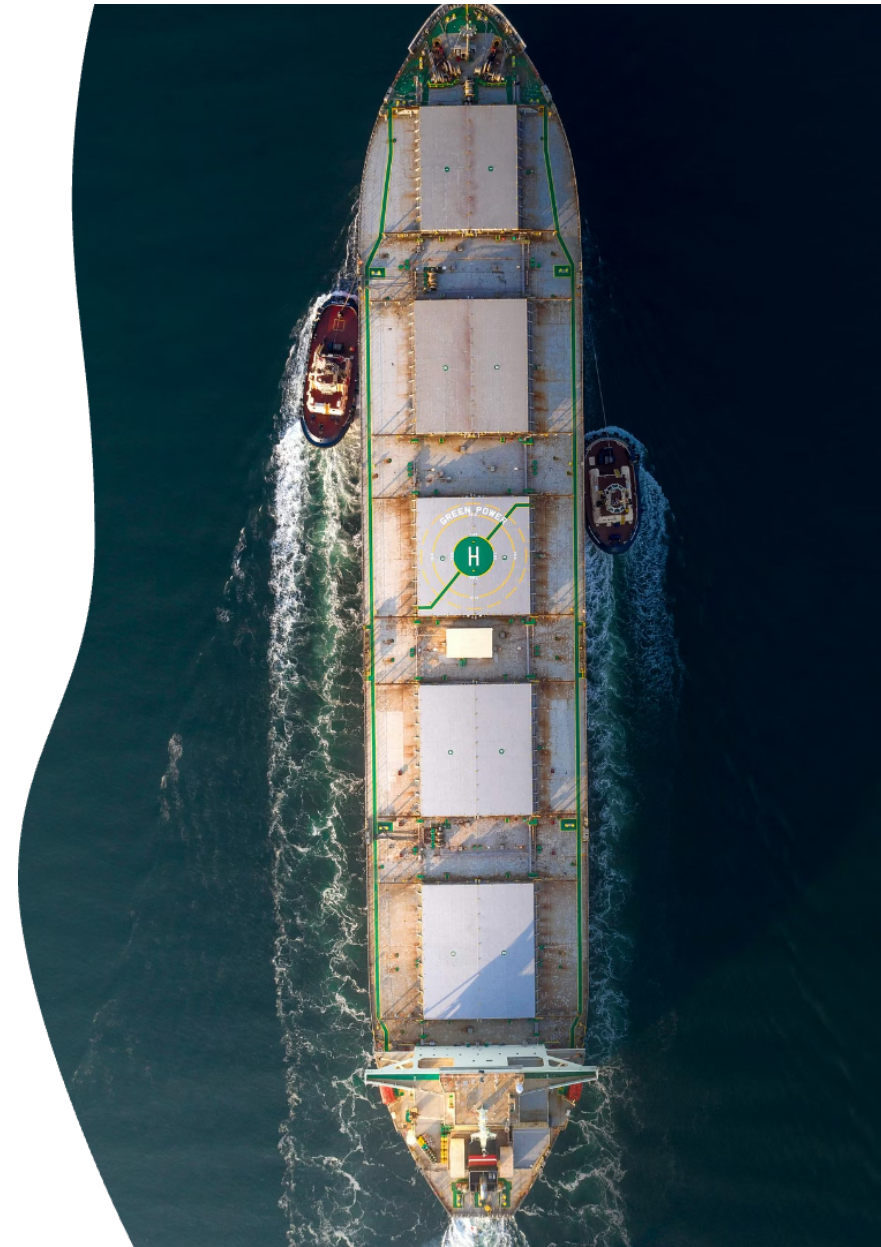
Some jurisdictions allow Charterers to offload bunkers to Claimant's custody instead of monetary security.

Jurisdictional Restrictions

Jurisdictions like Singapore prohibit bunker arrests.

Ownership Disputes

Even where arrests are possible, ownership disputes and sub-charters create obstacles.





Freezing Orders



Previously known as *Mareva* injunction



Nuclear Weapon

"A nuclear weapon in the maritime lawyers' arsenal"

- Lord Denning



Prevent Defendants from dissipating funds

So funds are available to satisfy eventual judgment



Proof required

Judges require proof of dissipation risk to grant injunction



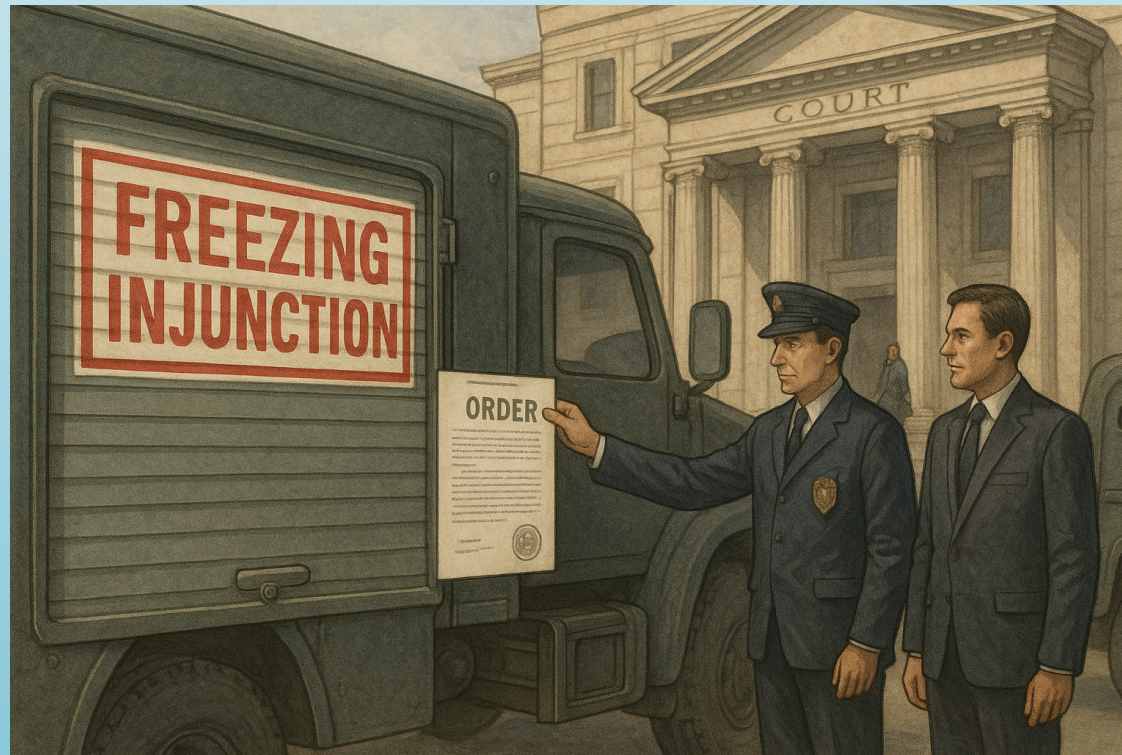
Cross-under takings

Claimants must provide cross-under takings, often "fortified" by bank guarantee or cash deposit

Freezing Orders in the UK



Freezing injunctions outside the UK

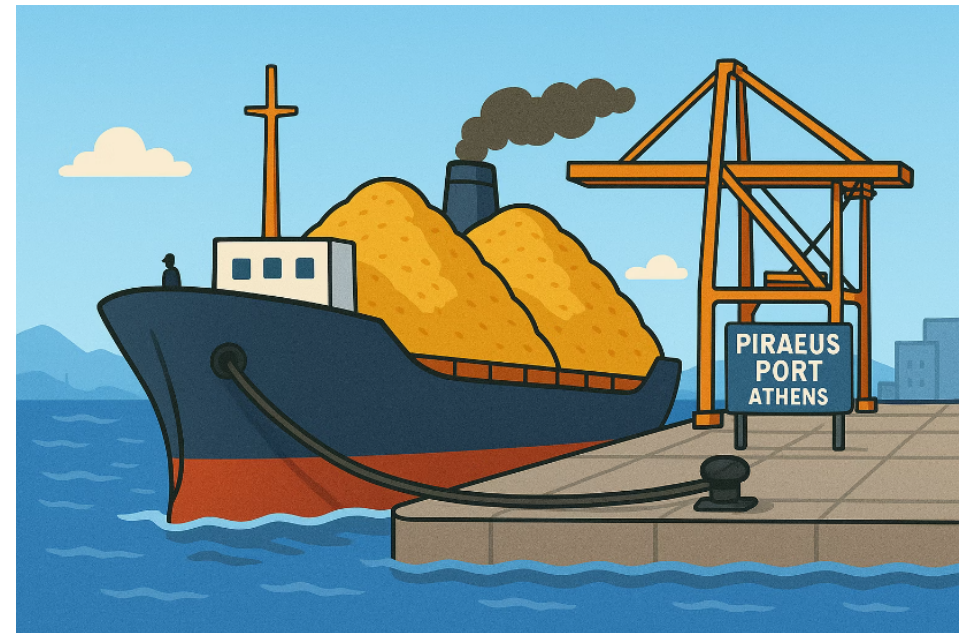


Arresting (rights in) the cargo or the B/L



Arresting Cargo

- Claims for freight, demurrage & detention.
- Charterers chartered another ship, loading cargo in Costanza, issuing BoLs made out "to order" & naming Charterers as Shippers.



What on earth is being arrested?



Arrest of Bill of Lading Under Greek Law

Nature of Bill of Lading

- Document of title
- Incorporates rights to request delivery of goods from the carrier.

Function as Security

- Arresting the Bill of Lading = seizing the rights incorporated in it
- Prevents delivery of goods until dispute resolved.

Legal Requirements

- Only bills of lading to order can be arrested.
- Claimant must prove eminent danger that claim won't be satisfied or urgent circumstances justifying security.



The Bill of Lading is "a key which in the hands of a rightful owner is intended to unlock the door of the warehouse in which the goods may chance to be." - Bowen LJ



A voyage of
discovery

Thank You!

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