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## Adrift on a Sea of Red Ink: The Status of Maritime Liens in Bankruptcy

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# Adrift on a Sea of Red Ink: The Status of Maritime Liens in Bankruptcy

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## **Abstract**

This Note argues that a bankruptcy court should be able to sell a vessel free of maritime liens without having to refer such a sale to an admiralty court. Part I examines the historical nature of the conflict between admiralty and bankruptcy principles. Part II analyzes the dominant approach, which applies admiralty principles when the sale of a vessel is mandated. Part III argues that a better approach uses bankruptcy principles, which enable a bankruptcy court to maintain jurisdiction over vessels subject to maritime liens and to sell these vessels free of such liens. This Note concludes that the proper course is to refer pending maritime foreclosures to, and consolidate a debtor's assets under, the jurisdiction of the bankruptcy court.

# ADRIFT ON A SEA OF RED INK: THE STATUS OF MARITIME LIENS IN BANKRUPTCY

## INTRODUCTION

The recent bankruptcies of United States Lines and Hellenic Lines, two of the United States shipping industry's largest participants, have raised anew the question whether a United States bankruptcy court may sell a vessel free of maritime liens. While some courts have held that a bankruptcy court<sup>1</sup> has the right to sell a vessel free of such liens,<sup>2</sup> the dominant view has been that only an admiralty court<sup>3</sup> may deliver a vessel free and clear of all liens.<sup>4</sup> The question has yet to be definitively settled by United States courts.<sup>5</sup>

This Note argues that a bankruptcy court should be able to sell a vessel free of maritime liens without having to refer such a sale to an admiralty court. Part I examines the historical nature of the conflict between admiralty and bankruptcy principles. Part II analyzes the dominant approach, which applies admiralty principles when the sale of a vessel is mandated. Part III argues that a better approach uses bankruptcy principles, which enable a bankruptcy court to maintain jurisdiction over vessels subject to maritime liens and to sell these vessels free of such liens. This Note concludes that the proper course

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1. The bankruptcy court is a unit of the district court. 28 U.S.C. § 151 (Supp. III 1985); see *infra* note 109.

2. See *In re Fougner Concrete Shipbuilding Co.*, 286 F. 379 (2d Cir. 1923); *Korrosion Kontrollers, Inc. v. Devaney*, 1980 Am. Mar. Cas. 82 (S.D.N.Y. 1979); *In re People's Mail S.S. Co.*, 19 F. Cas. 211 (E.D.N.Y. 1869) (No. 10,970). These courts predicated their decisions allowing the bankruptcy court to sell vessels free of maritime liens on the ground that the bankruptcy court acquired jurisdiction by means of *custodia legis*. See *infra* notes 48-67 and accompanying text. This Note will show that even if *custodia legis* is inapplicable, the bankruptcy court may still obtain jurisdiction over a vessel and sell it free of maritime liens.

3. "The admiralty courts . . . are district judges sitting in admiralty." *In re McLean Indus.*, 76 Bankr. 328, 338 (Bankr. S.D.N.Y. 1987).

4. The view that only an admiralty court may sell a vessel free of maritime liens appears to be the dominant view in the case law. See, e.g., *Morgan Guar. Trust Co. v. Hellenic Lines Ltd.*, 38 Bankr. 987 (S.D.N.Y.), *modified*, 585 F. Supp. 1227 (S.D.N.Y. 1984); *In re InterOcean Transp. Co.*, 232 F. 408 (S.D.N.Y. 1916); *The Philomena*, 200 F. 859 (D. Mass. 1911).

5. Landers, *The Shipowner Becomes a Bankrupt*, 39 U. CHI. L. REV. 490, 498-99 (1972); see G. GILMORE & C. BLACK, *THE LAW OF ADMIRALTY* § 9-93, at 812-13 (2d ed. 1975) [hereinafter GILMORE & BLACK].

is to refer pending maritime foreclosures to, and consolidate a debtor's assets under, the jurisdiction of the bankruptcy court.

### I. THE HISTORICAL CONFLICT BETWEEN ADMIRALTY AND BANKRUPTCY

When a debtor's assets become subject to the jurisdiction of both admiralty and bankruptcy proceedings, "the most perplexing conundrums arise."<sup>6</sup> Does an admiralty court have exclusive jurisdiction with respect to the adjudication of maritime liens,<sup>7</sup> or does the bankruptcy court have the ability to sell a vessel free of such liens?<sup>8</sup> The traditional view of both United States and foreign courts has been that only an admiralty court can divest or execute maritime liens.<sup>9</sup>

The conflict has recently become pressing in light of the multi-million dollar bankruptcies involving several major United States shipping lines. For example, in 1983 the Morgan Guaranty Trust Company of New York led foreclosure proceedings against Hellenic Lines, Ltd.<sup>10</sup> The foreclosure involved US\$80 million in loans on eleven ships owned by Hellenic.<sup>11</sup> Even more serious are the problems faced by United States Lines, Inc., whose admiralty and bankruptcy proceedings include twelve "Econships"<sup>12</sup> built at a cost of US\$47.5 million apiece.<sup>13</sup> While the sole bankruptcy action involving United States Lines is pending in the Southern District of New York, admiralty proceedings regarding these ships are being

6. Staring, *Bankruptcy: An Historical View*, 59 TUL. L. REV. 1157, 1166 (1985).

7. *Hellenic Lines*, 38 Bankr. at 994.

8. GILMORE & BLACK, *supra* note 5, § 9-91, at 807.

9. *See supra* note 4 and accompanying text.

10. Carter, *Admiralty Law Sailing Along Despite Waves*, NAT'L L.J., Jan. 11, 1988, at 10, col. 2.

11. *Id.* In *Hellenic Lines*, the petitioners brought numerous admiralty claims against the vessels and freights of Hellenic Lines. The court held that the admiralty court was the better forum to execute the sale of the vessels because "[o]nly an admiralty court can without question deliver a vessel free and clear of all liens." *Hellenic Lines*, 38 Bankr. at 999. However, the court allowed the bankruptcy court to maintain jurisdiction over the freights on these vessels. *Id.* at 999-1000. This dispersal of parts of the debtor's estate between admiralty and bankruptcy courts undermines policies of judicial economy. *See infra* notes 126-31 and accompanying text.

12. The "Econships" are ships designed to carry large volumes of goods packed in containers and "are the largest, most fuel efficient, modern and competitive container ships under the U.S. flag." *In re McLean Indus.*, 74 Bankr. 589, 590 (Bankr. S.D.N.Y. 1987).

13. Carter, *supra* note 10, at 10, col. 3.

brought in several courts throughout the United States and abroad.<sup>14</sup>

A. *The Incredibly Indelible Maritime Lien*

The admiralty field of law has a long history of pride and independence.<sup>15</sup> It is the only legal specialty recognized in the United States Constitution.<sup>16</sup> The substance and procedure of this unique body of law serve to protect the interests of maritime participants above all others.<sup>17</sup> The maritime lien is symbolic of the desire of those involved in the admiralty field to uphold this sense of autonomy and to maintain a comfortable distance from competing bodies of law.<sup>18</sup>

A maritime lien is, as far as maritime objects are concerned, the supreme security device. It gives a creditor a property right in a vessel in return for services performed on the vessel and allows the creditor the right to have the vessel sold to satisfy the debt.<sup>19</sup> Traditionally, this right remains valid and enforceable even if the vessel is sold to an innocent purchaser who is ignorant of the existence of the lien.<sup>20</sup>

The maritime lien carries with it an air of indelibility because it establishes a property right in the lienor, and only a

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14. *Id.*

15. Landers, *supra* note 5, at 490-91; *see also* GILMORE & BLACK, *supra* note 5, § 1-1, at 2 (maritime law's "tie with a single industry, and its separate, long-continued, and international traditions and history mark it off quite distinctly from . . . branches of shoregoing law").

16. Carter, *supra* note 10, at 9, col. 1. Article III, § 2, of the United States Constitution provides that "[t]he judicial power shall extend . . . to all Cases of admiralty and maritime Jurisdiction." U.S. CONST. art. III, § 2.

17. Staring, *supra* note 6, at 1176.

18. "The beginning of wisdom in the law of maritime liens is that maritime liens and land liens have little in common. A lien is a lien is a lien, but a maritime lien is not." GILMORE & BLACK, *supra* note 5, § 9-2, at 589.

19. *The Poznan*, 9 F.2d 838, 842 (2d Cir. 1925), *rev'd on other grounds sub nom. New York Dock Co. v. S.S. Poznan*, 274 U.S. 117 (1927). The Federal Maritime Lien Act, 46 U.S.C. app. §§ 971-975 (Supp. III 1985), grants a maritime lien to "[a]ny person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessities, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner" and further provides that the lien "may be enforced by a suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel." *Id.* § 971; *see also* text accompanying *infra* notes 68-78 (tracing the development of the maritime lien as a secured interest).

20. Recent Development, 21 HARV. INT'L L.J. 721, 723 n.15 (1980); *see also The Poznan*, 9 F.2d at 842 ("A maritime lien . . . is a secret one which may operate to the prejudice of general creditors and purchasers without notice.").

proceeding in rem can extinguish this right.<sup>21</sup> Moreover, true to the autonomous nature of the admiralty courts, and because it is the admiralty court that "forces it by a proceeding *in rem*,"<sup>22</sup> the admiralty court is the only court competent to enforce the lien.<sup>23</sup>

### B. *A Matter of Priorities*

The divergent views of admiralty and bankruptcy law concerning the rights of creditors, debtors, and maritime lienors<sup>24</sup> reinforce the view that admiralty and bankruptcy courts have separate and distinct jurisdictions and function independently of one another.<sup>25</sup>

#### 1. The Race to the Courthouse

A major concern of bankruptcy courts is the promotion of a fresh start for debtors.<sup>26</sup> For instance, the automatic stay<sup>27</sup>

21. The maritime lien is indelible insofar as the only judicial proceeding that may extinguish the lien is one taken in rem. However, the lien can be lost through laches. GILMORE & BLACK, *supra* note 5, § 9-2, at 588; *see, e.g.*, John W. Stone Oil Distrib., Inc. v. M/V Miss Bern, 663 F. Supp. 773, 780 (S.D. Ala. 1987) (maritime lienholder guilty of laches when he failed to exercise the high degree of diligence necessary to enforce a maritime lien against a bona fide purchaser without notice of the lien); *see also* Harmer v. Bell (The "Bold Buccleugh"), 7 Moore P.C. 276, 285, 13 Eng. Rep. 884, 891 (1851) ("It is not necessary to say that the lien is indelible, and may not be lost by negligence or delay where the rights of third parties may be compromised . . .").

22. *The Bold Buccleugh*, 7 Moore P.C. at 284, 13 Eng. Rep. at 890.

23. *Id.*

24. Staring, *supra* note 6, at 1166.

25. Fridlund, *Federal Taxes and Preferred Ship Mortgages*, 38 HARV. L. REV. 1060, 1072 (1925). This article has been criticized as "superficial and lacking in authoritative support." *See* Landers, *supra* note 5, at 507 n.70.

26. Staring, *supra* note 6, at 1166.

27. Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a) (1982 & Supp. IV 1986), provides that a petition filed under § 301, 302, or 303 of the Code operates as a stay of

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

...

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any

gives the debtor a "breathing spell"<sup>28</sup> so that he can proceed in an orderly fashion in establishing a liquidation or reorganization plan.<sup>29</sup> The automatic stay also protects creditors by eliminating the race to the courthouse for distribution of a debtor's assets, thereby guaranteeing some semblance of equal treatment for creditors.<sup>30</sup> In addition, the bankruptcy court involved in a maritime bankruptcy proceeding benefits from the respite granted to debtors and creditors, particularly if the vessel is one of many assets belonging to a debtor. The automatic stay provides the bankruptcy court with the time it needs to sort out the debtor's assets, make the necessary sales, and distribute the proceeds.<sup>31</sup>

Admiralty courts do not share these concerns. Admiralty courts seek the expeditious sale of a vessel,<sup>32</sup> because vessels are subject to deterioration, decay, or injury while in custody.<sup>33</sup> Also, a speedy sale returns the "arrested" vessel to the flow of commerce and protects a major interest of the maritime industry in having its most productive assets available for service.<sup>34</sup>

## 2. Weighing the Interests of Creditors

Bankruptcy proceedings seek first to satisfy in full the

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lien to the extent that such lien secures a claim that arose before the commencement of the case under this title . . . .

11 U.S.C. § 362(a) (1982 & Supp. IV 1986).

Once a petition for bankruptcy has been filed, the automatic stay prevents a maritime lienor from forcing the sale of a vessel to satisfy the lien. Fitzgerald, *Muddy Waters: Where Admiralty Meets Bankruptcy*, 10 MAR. LAW. 91, 96 (1985). Once the stay is lifted, the bankruptcy court may then allow the admiralty court to continue with foreclosure proceedings. *In re Prudential Lines, Inc.*, 69 Bankr. 439, 451 (Bankr. S.D.N.Y. 1987).

28. *Prudential Lines*, 69 Bankr. at 444 (quoting *In re Colin, Hochstin Co.*, 41 Bankr. 322, 325 (Bankr. S.D.N.Y. 1984)).

29. *Id.*

30. *United States v. LeBouf Bros. Towing*, 45 Bankr. 887, 890 (E.D. La. 1985); Staring, *supra* note 6, at 1176.

31. *See supra* note 27.

32. *Coastal Prod. Credit Ass'n v. O/S "Santee"*, 51 Bankr. 1018, 1020 (S.D. Ga. 1985); *see also Landers, supra* note 5, at 492 (admiralty proceedings result in the quick sale of the vessel and distribution of the proceeds in a proceeding limited to the vessel and its creditors).

33. *In re Prudential Lines, Inc.*, 69 Bankr. 439, 451 (Bankr. S.D.N.Y. 1987) (quoting FED. R. CIV. P. Supp. R. E(9)(b) (admiralty and maritime claims)).

34. Staring, *supra* note 6, at 1166 ("admiralty has a strong policy favoring the mobility of vessels"); *see also Piedmont & Georges Creek Coal Co. v. Seaboard Fisheries Co.*, 254 U.S. 1, 9 (1920) ("The ship's function is to move from place to place.').

claims of all secured creditors<sup>35</sup> and then attempt to weigh equally all unsecured interests.<sup>36</sup> The interests of maritime lienors are considered secured interests<sup>37</sup> and are weighed by the bankruptcy court along with the claims of other secured creditors to determine their validity and priority.<sup>38</sup> Maritime claimants may ultimately find their entire claims settled to the same extent in bankruptcy as they would have been in admiralty.<sup>39</sup>

Admiralty proceedings, however, give precedence to maritime claims at the expense of any and all non-maritime claims,<sup>40</sup> providing further evidence of the autonomous nature of admiralty law. Non-maritime claimants are the last to have their claims satisfied when the proceedings are held in the admiralty court.<sup>41</sup> If the vessel is either the only asset of the debtor, or the only asset whose sale is likely to reap substantial proceeds, maritime lienors may have their entire claims satisfied.<sup>42</sup> Meanwhile, creditors who would find their interests protected in a bankruptcy proceeding are left with nothing.<sup>43</sup>

### C. Taking the "Safe" Course?

The opposing views of admiralty and bankruptcy concerning the rights of debtors and creditors, as well as the admiralty

35. 2 D. COWANS, BANKRUPTCY LAW AND PRACTICE § 12.22, at 501 (1987).

36. Staring, *supra* note 6, at 1166.

37. *The Poznan*, 9 F.2d 838, 842 (2d Cir. 1925), *rev'd on other grounds sub nom. New York Dock Co. v. S.S. Poznan*, 274 U.S. 117 (1927).

38. The bankruptcy judge may hear and determine all core proceedings arising under title 11, including any determinations related to the validity, extent, or priority of liens. 28 U.S.C. § 157(b)(2)(K) (Supp. III 1985).

39. "The trustee in bankruptcy takes the schooner in the same plight and condition as she was held by the bankrupt; i.e., subject to all valid maritime liens to be enforced with priorities according to the admiralty law." *The Robert & Edwin*, 32 F.2d 390, 390 (D. Mass. 1929).

40. Staring, *supra* note 6, at 1166; *see also In re Prudential Lines, Inc.*, 69 Bankr. 439, 451 (Bankr. S.D.N.Y. 1987) (the admiralty court may hold a sale of a vessel and distribute the proceeds of the sale only to maritime lien claimants with any surplus being turned over to the bankruptcy estate); Landers, *supra* note 5, at 492 ("admiralty can quickly sell the vessel and distribute the proceeds in a proceeding limited to the vessel and its creditors").

41. GILMORE & BLACK, *supra* note 5, § 9-87, at 791. "[T]he admiralty court will not distribute funds in its registry to general creditors of the owner although it will distribute surplus funds . . . to . . . non-maritime . . . claimants." *Id.*

42. *United States v. LeBouf Bros. Towing*, 45 Bankr. 887, 890 (E.D. La. 1985).

43. *Id.*

tradition of independence, set admiralty and bankruptcy principles on a collision course when a vessel becomes subject to bankruptcy proceedings. A number of United States courts have tried to steer a safe course and avoid such confrontations by simply allowing the admiralty court to administer the sale of the vessel.<sup>44</sup> These decisions are usually based on adherence to three principles that mandate the application of admiralty law in determining which court sells the vessel free of maritime liens: the doctrine of *custodia legis*,<sup>45</sup> recognition of maritime lienors as secured creditors,<sup>46</sup> and concerns of international comity.<sup>47</sup>

## II. IS THE LAW OF THE SEA THE LAW OF THE LAND?

The effect of a sale of a vessel on maritime liens may have made admiralty law the law of the land as well as the sea. The doctrine of *custodia legis*, the recognition of the maritime lienor as a secured creditor, and international comity concerns underlie this rationale.

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44. See, e.g., *Morgan Guar. Trust Co. v. Hellenic Lines Ltd.*, 38 Bankr. 987, 1000 (S.D.N.Y.), *modified*, 585 F. Supp. 1227 (S.D.N.Y. 1984); *Prudential Lines*, 69 Bankr. at 451.

45. *Custodia legis* means "in the custody of the law." BLACK'S LAW DICTIONARY 346 (5th ed. 1979). "Property is in the custody of the law when it has been lawfully taken by authority of legal process, and remains in the possession of a public officer . . . or an officer of a court . . . empowered by law to hold it." *Id.* at 347; see, e.g., *Moran v. Sturges*, 154 U.S. 256, 283-84 (1894) ("As between two courts of concurrent . . . jurisdiction . . . the court which first obtains jurisdiction is entitled to retain it without interference . . ."); *Wong Shing v. M/V Mardina Trader*, 564 F.2d 1183, 1188 (5th Cir. 1977) ("When a court of competent jurisdiction takes possession of property . . . that property is withdrawn from the jurisdiction of all other courts."); *Ciel y Cia. S.A. v. Nereide Societa di Navigazione per Azioni*, 1983 Am. Mar. Cas. 1192, 1194 (E.D. Va. 1983) ("once a vessel is in the custody of one court, other courts should defer to the jurisdiction of that court").

46. See *supra* notes 19-20 and accompanying text.

47. Comity is "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws." *Hilton v. Guyot*, 159 U.S. 113, 164 (1895).

Judge Sweet, in *Hellenic Lines*, noted that admiralty courts outside the United States might not recognize the ability of United States bankruptcy courts to sell vessels free of maritime liens. *Morgan Guar. Trust Co. v. Hellenic Lines Ltd.*, 38 Bankr. 987, 990-91, 999 (S.D.N.Y.), *modified*, 585 F. Supp. 1227 (S.D.N.Y. 1984). Although his decision to vest jurisdiction over the vessels in the admiralty court was not based on the fear that comity would not be granted to a United States bankruptcy court decision, it can be inferred that such fear did influence his decision.

A. *First Come, First Served*

The *custodia legis* doctrine is essentially that of first come, first served.<sup>48</sup> In other words, the court first obtaining jurisdiction over a vessel will administer the sale of the vessel.<sup>49</sup> *Custodia legis* is usually applied where bankruptcy proceedings are based on a petition for liquidation.<sup>50</sup>

1. *Custodia Legis* and the Petition for Liquidation

*Custodia legis* has been applied where liquidations are concerned because of the view that liquidation procedures are entirely consonant with the goals of admiralty law.<sup>51</sup> Liquidation involves the rapid sale of a debtor's assets and equitable distribution of the proceeds of the sale among the debtor's creditors.<sup>52</sup> Similarly, admiralty courts seek the expeditious sale of a vessel.<sup>53</sup>

Numerous courts and commentators alike have argued that when a Federal District Court in admiralty and a Federal District Court in bankruptcy obtain concurrent jurisdiction and their ultimate goals are similar, if not identical, principles of comity determine that the court first obtaining jurisdiction will maintain jurisdiction for the duration of the proceedings.<sup>54</sup> The "identical" principles of bankruptcy liquidation and admiralty foreclosure make *custodia legis* a practical means of preventing jurisdictional disputes between admiralty and bank-

48. *Coastal Prod. Credit Ass'n v. O/S "Santee"*, 51 Bankr. 1018, 1020 (S.D. Ga. 1985); *Hellenic Lines*, 38 Bankr. at 996.

49. *Coastal Prod.*, 51 Bankr. at 1020; see *Hellenic Lines*, 38 Bankr. at 996; Landers, *supra* note 5, at 493-94.

50. *United States v. LeBouf Bros. Towing*, 45 Bankr. 887, 889 (E.D. La. 1985); Landers, *supra* note 5, at 509. Liquidation is defined as "[t]he settling of financial affairs of a business or individual, usually by liquidating (turning to cash) all assets for distribution to creditors, heirs, etc." BLACK'S LAW DICTIONARY, *supra* note 45, at 839; see 11 U.S.C. §§ 701-766 (1982 & Supp. IV 1986).

51. See *Coastal Prod.*, 51 Bankr. at 1020; *LeBouf*, 45 Bankr. at 889; Landers, *supra* note 5, at 509.

52. See *supra* note 50.

53. See *supra* text accompanying notes 32-34.

54. See, e.g., *Coastal Prod.*, 51 Bankr. at 1020; *Morgan Guar. Trust Co. v. Hellenic Lines Ltd.*, 38 Bankr. 987, 997 (S.D.N.Y.), *modified*, 585 F. Supp. 1227 (S.D.N.Y. 1984); GILMORE & BLACK, *supra* note 5, § 9-92, at 807-08; Landers, *supra* note 5, at 509.

ruptcy courts.<sup>55</sup> According to these principles, an entire liquidation need not be held in the bankruptcy court.<sup>56</sup>

## 2. *Custodia Legis* and the Petition for Reorganization

United States courts have reached inconsistent results in determining whether *custodia legis* applies when a debtor files a petition for reorganization.<sup>57</sup> Some courts have treated reorganizations in the same manner as liquidations and have applied *custodia legis* in both cases.<sup>58</sup> A majority, however, have concluded that reorganizations are to be treated differently from liquidations and that *custodia legis* is inapplicable when the debtor is involved in reorganization.<sup>59</sup>

In effect, prior jurisdiction by an admiralty court is irrelevant where a reorganization is concerned.<sup>60</sup> In reorganization, the bankruptcy court is not concerned with the rapid sale and equitable distribution of a debtor's assets.<sup>61</sup> Rather, reorganization seeks a continuation of the debtor's business;<sup>62</sup> it does not seek to bury the business and divide up its assets.<sup>63</sup> Thus, the goals of reorganization in no way coincide with the desire of the admiralty court to dispose of a ship as a debtor's asset by a speedy sale.<sup>64</sup> If the admiralty court proceeds with the sale of a vessel despite a petition for reorganization, the sale will

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55. *Atlantic Richfield Co. v. Good Hope Refineries, Inc.*, 604 F.2d 865, 869 (5th Cir. 1979); *Hellenic Lines*, 38 Bankr. at 997.

56. *Atlantic Richfield*, 604 F.2d at 869.

57. "Reorganization simply means the act or process of organizing again or anew . . . [and] is usually effected by the dissolution of one and the organization of a new corporation to take the property . . . of the first and to continue its business." *People ex rel. Barrett v. Halsted St. State Bank*, 295 Ill. App. 193, 204, 14 N.E.2d 872, 877 (1938) (emphasis added) (citing 8 THOMPSON ON CORPORATIONS § 5960, at 4 (E.F. White 3d ed. 1927)); see 11 U.S.C. §§ 1101-1146 (1982 & Supp. IV 1986).

58. See, e.g., *Morgan Guar. Trust Co. v. Hellenic Lines Ltd.*, 38 Bankr. 987, 996-97 (S.D.N.Y.), modified, 585 F. Supp. 1227 (S.D.N.Y. 1984) (citing *McDermott Inc. v. M/V Angela Briley*, No. S 83-0434(N), slip op. (S.D. Miss. Jan. 13, 1984); *Ciel y Cia. S.A. v. Nereide Societa di Navigazione por Azioni*, 1983 Am. Mar. Cas. 1192, 1194-95 (E.D. Va. 1983)).

59. See, e.g., *Coastal Prod. Credit Ass'n v. O/S "Santee"*, 51 Bankr. 1018, 1020-21 (S.D. Ga. 1985); *In re J.S. Gissel & Co.*, 238 F. Supp. 130, 132-33 (S.D. Tex. 1965).

60. *Landers*, *supra* note 5, at 509.

61. See *supra* note 57.

62. *Atlantic Richfield Co. v. Good Hope Refineries, Inc.*, 604 F.2d 865, 869 (5th Cir. 1979).

63. *Susquehanna Chem. Corp. v. Producers Bank & Trust Co.*, 174 F.2d 783, 787 (3d Cir. 1949).

64. See *supra* text accompanying notes 32-34.

result in removing what may be the most productive asset from the reorganization proceedings,<sup>65</sup> thereby impairing the debtor's ability to reorganize<sup>66</sup> and preventing the expedient handling of claims by the bankruptcy court.<sup>67</sup>

### B. *Security for Services Rendered*

The autonomous nature of admiralty law is particularly evident in the precedence given to maritime claims at the expense of non-maritime claims when a vessel becomes subject to foreclosure proceedings.<sup>68</sup> Congress, by enacting the Federal Maritime Lien Act,<sup>69</sup> implicitly acknowledged this preferential treatment by deciding not to change the general principles of the existing law of maritime liens,<sup>70</sup> thus perpetuating the notion of the maritime lienor as a secured creditor.

The law of maritime liens developed out of the necessity of having ships in constant operation.<sup>71</sup> Unless repairs and supplies were promptly furnished to a vessel, abandonment of the vessel and voyage was likely.<sup>72</sup> The inherently transient nature of vessels,<sup>73</sup> however, required that some security of payment be given if services were to be performed on the vessel.<sup>74</sup> Thus, the only means of assuring that ships were kept operating was to treat those dealing with a ship in a preferred manner by giving them the right to have the vessel sold to satisfy an existing debt.<sup>75</sup>

65. *In re Prudential Lines, Inc.*, 69 Bankr. 439, 447 (Bankr. S.D.N.Y. 1987).

66. *Id.*

67. *Coastal Prod. Credit Ass'n v. O/S "Santee"*, 51 Bankr. 1018, 1021 (S.D. Ga. 1985).

68. *See supra* text accompanying notes 40-43.

69. 46 U.S.C. app. §§ 971-975 (Supp. III 1985).

70. *Piedmont & Georges Creek Coal Co. v. Seaboard Fisheries Co.*, 254 U.S. 1, 11-12 (1920) (citing S. REP. NO. 831, 61st Cong., 2d Sess. 4 (1910)).

71. *Piedmont*, 254 U.S. at 9; *see Tramp Oil & Marine Ltd. v. M/V Mermaid I*, 630 F. Supp. 630, 632 (D.P.R. 1986) ("The Federal Maritime Lien Act, in providing for a lien for 'supplies' or 'other necessities', seeks to keep the ship operating, allowing for the flow of commerce while protecting the interests of the owners and secured parties.")

72. *Piedmont*, 254 U.S. at 9.

73. *Id.*; *see also* sources cited *supra* note 34.

74. *Piedmont*, 254 U.S. at 9; *see also Equilease Corp. v. M/V Sampson*, 793 F.2d 598, 602 (5th Cir.) ("One purpose of the Ship Mortgage Act . . . of which the Federal Maritime Lien Act is a part, was to establish sound security . . . [and] to spur incentive for the financing of shipowners . . ."), *cert. denied*, 107 S. Ct. 570 (1986).

75. *See supra* note 19 and accompanying text.

It is this ability of the maritime lienor to appropriate the debtor's ship and have it sold to satisfy the debt that makes the lienor's interest a secured one.<sup>76</sup> As a secured interest, it ultimately takes precedence over the claims of a debtor's general creditors,<sup>77</sup> and, according to maritime law, it may only be executed by an admiralty court acting in rem.<sup>78</sup>

### C. *In Search of International Comity*

United States courts also tend to rely on admiralty principles regarding execution of maritime liens because of the notion that foreign courts will not afford comity to bankruptcy proceedings purporting to sell a vessel free of maritime liens.<sup>79</sup> Indeed, the fear that foreign courts would not recognize such a sale by a United States bankruptcy court was borne out in several British cases,<sup>80</sup> dating back as early as 1868. These cases specifically held that bankruptcy proceedings in foreign courts do not serve to extinguish existing maritime liens and thus subjected the purchaser of the vessels to the claims of maritime lienors that originated prior to the sale.<sup>81</sup> These courts noted that only a proceeding in rem could extinguish a maritime

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76. *The Poznan*, 9 F.2d 838, 842 (2d Cir. 1925), *rev'd on other grounds sub nom. New York Dock Co. v. S.S. Poznan*, 274 U.S. 117 (1927).

77. *Id.*; see also GILMORE & BLACK, *supra* note 5, § 9-58, at 734 (maritime claims outrank non-maritime claims).

78. GILMORE & BLACK, *supra* note 5, § 9-2, at 588.

79. See *supra* note 47; see also *In re McLean Indus.*, 76 Bankr. 328, 332 (Bankr. S.D.N.Y. 1987) ("Also of concern is the unfortunate notion that the law has not yet grown to the point where other nations have afforded comity to bankruptcy proceedings."). *But cf. Victrix S.S. Co. v. Salen Dry Cargo*, 825 F.2d 709, 713 (2d Cir. 1987) ("American courts have long recognized the particular need to extend comity to foreign bankruptcy proceedings."); *Cunard Steamship Co. v. Salen Reefer Servs.*, 773 F.2d 452, 460 (2d Cir. 1985) ("American courts have consistently recognized the interest of foreign courts in liquidating or winding up the affairs of their own domestic business entities.").

80. See, e.g., *The "Goulandris"*, 27 Lloyd's Rep. 120 (Adm. Div. 1927); *The Charles Amelia*, 3 Mar. L. Cas. 203 (Adm. Div. 1868). In *The Goulandris*, the British court held that the sale of a vessel by an Egyptian court was similar to British bankruptcy proceedings and would not extinguish a maritime lien. 27 Lloyd's Rep. at 124, 126. *The Charles Amelia* involved the sale of a vessel by a French court, which again was considered to be the equivalent of a British bankruptcy proceeding and did not extinguish the lien. 3 Mar. L. Cas. at 204.

81. *The Goulandris*, 27 Lloyd's Rep. at 124, 126; *The Charles Amelia*, 3 Mar. L. Cas. at 204.

lien.<sup>82</sup> The foreign bankruptcy proceedings in these cases did not purport to be proceedings in rem<sup>83</sup> and therefore could not sell the vessels free of maritime liens.<sup>84</sup> The fear of subjecting a ship and its owner to secret claims has buttressed the majority view that looks to admiralty courts to administer the sale of a vessel free of maritime liens.<sup>85</sup> Such a sale by an admiralty court will be recognized worldwide and will serve to extinguish all liens of every description.<sup>86</sup>

However, this fear of secret claims is at odds with the view of United States courts that have long afforded comity to foreign bankruptcy proceedings purporting to sell a vessel free of liens.<sup>87</sup> United States courts have consistently held that if the sale is by a court of competent jurisdiction, that court's order is "entitled to recognition and [is] binding on American courts."<sup>88</sup> The recognition of foreign court orders by United States courts would indicate that foreign courts, in turn, would grant comity to a decision of a United States bankruptcy court that sells a vessel free of maritime liens.<sup>89</sup>

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82. *The Goulandris*, 27 Lloyd's Rep. at 124, 126; *The Charles Amelia*, 3 Mar. L. Cas. at 204.

83. *The Goulandris*, 27 Lloyd's Rep. at 124, 126; *The Charles Amelia*, 3 Mar. L. Cas. at 204.

84. *The Goulandris*, 27 Lloyd's Rep. at 124, 126; *The Charles Amelia*, 3 Mar. L. Cas. at 204.

85. See, e.g., *The Mary*, 13 U.S. 75, 86, 9 Cranch 126, 144 (1815) ("The whole world, it is said, are parties in an admiralty cause; and, therefore, the whole world is bound by the decision.").

86. *Morgan Guar. Trust Co. v. Hellenic Lines Ltd.*, 38 Bankr. 987, 998-99 (S.D.N.Y.), modified, 585 F. Supp. 1227 (S.D.N.Y. 1984).

87. See, e.g., *Gulf & S. Terminal Corp. v. S.S. President Roxas*, 701 F.2d 1110, 1111-12 (4th Cir.), cert. denied, 462 U.S. 1133 (1983); see also *Victrix S.S. Co. v. Salen Dry Cargo*, 825 F.2d 709, 713 (2d Cir. 1987) ("American courts have long recognized the particular need to extend comity to foreign bankruptcy proceedings.") (citing *Cunard S.S. Co. v. Salen Reefer Servs.*, 773 F.2d 452, 458 (2d Cir. 1985)).

88. *Gulf & S. Terminal Corp.*, 701 F.2d at 1112; accord *The Trenton*, 4 F. 657, 661 (E.D. Mich. 1880) ("the doctrine that the sale of a vessel by a court of competent jurisdiction discharges her from liens of every description, is the law of the civilized world"); see also *Hilton v. Guyot*, 159 U.S. 113, 202-03 (1895) ("[W]here there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction . . . the merits of the case should not . . . be tried afresh . . ."); *Victrix*, 825 F.2d at 713 ("Federal courts generally extend comity whenever the foreign court had proper jurisdiction and enforcement does not prejudice the rights of United States citizens or violate domestic public policy.").

89. *In re McLean Indus.*, 74 Bankr. 589, 602 (Bankr. S.D.N.Y. 1987).

### III. TACKING ONTO A DIFFERENT COURSE

The time has come for United States courts to recognize that United States District Courts in bankruptcy not only have the power to sell vessels free of maritime liens, but also that the application of bankruptcy principles presents a much fairer means of administering foreclosure proceedings<sup>90</sup> where a debtor's assets are subject to both admiralty and bankruptcy proceedings.

#### A. *The Death of Custodia Legis*

The ability of an admiralty court to retain jurisdiction over a vessel by means of *custodia legis* depends, essentially, on whether the debtor is involved in liquidation or reorganization.<sup>91</sup> Reevaluation of the status of the maritime lienor as a secured creditor, combined with the application of fundamental bankruptcy principles, eliminates the need to distinguish between liquidations and reorganizations for jurisdictional purposes. Accordingly, when admiralty and bankruptcy courts have concurrent control over a vessel, ultimate jurisdiction is entirely within the scope of powers of the bankruptcy courts.

#### 1. Eliminating Preferential Treatment

Ships, and those who deal with them, are part of the worldwide maritime industry. However, this is the only sector of the maritime industry benefitting from the special treatment conferred by the maritime lien.<sup>92</sup> For example, the maritime lien distinguishes between the person who paints the ship and the person who paints the dock. The former is given the status

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90. Various courts have held that the marshaling of the debtor's assets into one court made the bankruptcy court a fairer forum to determine maritime claims because the claims of all creditors would be considered. See Landers, *supra* note 5, at 506 & n.67 (citing First Union Trust & Sav. Bank v. Consumers' Co., 63 F.2d 273, 274 (7th Cir.), *rev'd as moot*, 290 U.S. 585 (1933)); *In re* New York, N.H. & H.R. Co., 17 F. Supp. 488 (D. Conn. 1936); The Robert & Edwin, 32 F.2d 390 (D. Mass. 1929)). This conclusion is highly justified because "[e]quality of creditors is the hallmark of bankruptcy law everywhere." Staring, *supra* note 6, at 1175. Admiralty, on the other hand, "has no policy interest regarding individuals or businesses . . . [and] will uphold the private right to enforce liens at whatever cost to others." *Id.* at 1166.

91. See *supra* notes 50-67 and accompanying text.

92. The Federal Maritime Lien Act, 46 U.S.C. app. §§ 971-975 (Supp. III 1985), grants a maritime lien only to those dealing directly with a vessel. *Id.* § 971.

of a secured creditor,<sup>93</sup> while the latter is treated as a general, non-maritime claimant, whose claim is subordinate to that of the maritime lienor.<sup>94</sup>

A secured interest, by definition, is a lien created by agreement between the parties.<sup>95</sup> A maritime lien, however, arises by operation of law and not by specific agreement between the parties.<sup>96</sup> Thus, the maritime lienor resembles a general creditor,<sup>97</sup> whose claim upon the property also arises without specific agreement between the parties.<sup>98</sup> Allowing the admiralty court to obtain jurisdiction through *custodia legis* where a liquidation proceeding is concerned perpetuates the preferential treatment given the person painting the ship at the expense of the person painting the dock.<sup>99</sup> If both are viewed as general creditors such unequal treatment is unjustified.

## 2. Protecting the Rights of Creditors

Allowing a bankruptcy court to maintain jurisdiction over a vessel involved in concurrent liquidation and admiralty proceedings prevents the unequal treatment between maritime lienors and general creditors. The equitable distribution of a debtor's assets to his creditors and the equality of creditors are the primary goals of bankruptcy law.<sup>100</sup> Although bankruptcy liquidation and maritime foreclosure both seek the speedy sale

93. See *supra* text accompanying notes 68-78.

94. Staring, *supra* note 6, at 1176. "By defining in rem claims as security interests, admiralty law creates a substantive and procedural basis for preferential payment of [maritime] creditors." *Id.*; see also GILMORE & BLACK, *supra* note 5, § 9-58, at 734 (maritime claims outrank non-maritime claims).

95. See 11 U.S.C. § 101(45) (1982 & Supp. IV 1986); see also I.R.C. § 6323(h) (1982) (a security interest is an interest in property acquired by contract).

96. *Equilease Corp. v. M/V Sampson*, 793 F.2d 598, 602 (5th Cir.), *cert. denied*, 107 S. Ct. 570 (1986).

97. See Staring, *supra* note 6, at 1176 ("a maritime lien permits a creditor who on land would be recognizable only as a general unsecured creditor to be seen instead as a secured creditor").

98. See GILMORE & BLACK, *supra* note 5, § 9-1, at 586 ("A land lien may be . . . involuntary — that is, attaching to [a debtor's] property without his consent, by action of creditor or court.").

99. See *United States v. LeBouf Bros. Towing*, 45 Bankr. 887, 890 (E.D. La. 1985) ("If a court proceeds with an *in rem* admiralty action after a petition for liquidation has been filed, the rights of the debtor's creditors may not be adequately represented in the admiralty action.").

100. *Id.* at 890; see also 3 COLLIER ON BANKRUPTCY ¶ 507.02(1), at 507-15 (L. King 15th Ed. 1987) (the primary goal of bankruptcy legislation is the equitable distribution of a debtor's assets to his creditors).

of a debtor's assets,<sup>101</sup> their goals are dissimilar with respect to protecting the rights of creditors.<sup>102</sup>

The application of *custodia legis* to a reorganization could easily frustrate the purpose of the reorganization;<sup>103</sup> the same can be said when *custodia legis* is applied to a liquidation. An admiralty court that proceeds with a maritime foreclosure after a petition for liquidation is filed substantially jeopardizes the rights of a debtor's general creditors by giving precedence to maritime claims at the expense of non-maritime claims.<sup>104</sup> In the foreclosure proceedings against a vessel, those with maritime liens recognized by the admiralty court would be entitled to a priority superior to the claims of the debtor's non-maritime creditors.<sup>105</sup> Such preferential treatment is unjustified if maritime lienors are viewed as general creditors<sup>106</sup> who should be treated on equal grounds as other general creditors. Since courts are willing to concede the necessity of maintaining jurisdiction in the bankruptcy court to prevent the impairment of reorganization proceedings, they should also recognize the necessity of affording similar protection when liquidation is involved. A failure to afford such protection perpetuates the unequal treatment of creditors<sup>107</sup> that results when an admiralty court obtains jurisdiction over a vessel that is subject to concurrent liquidation proceedings.

### 3. The 1984 Bankruptcy Amendments

The 1984 Bankruptcy Amendments<sup>108</sup> ("Amendments") have also contributed to the demise of *custodia legis*. The Amendments make the bankruptcy court a unit of the district court,<sup>109</sup> allow the district court to refer all proceedings related

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101. See *supra* notes 32-34, 50 and accompanying text.

102. See *supra* notes 40-43 and accompanying text.

103. Landers, *supra* note 5, at 509; see also *supra* notes 57-67 and accompanying text (*custodia legis* is not applicable when the debtor is involved in reorganization proceedings).

104. See *supra* notes 40-43 and accompanying text.

105. *United States v. LeBouf Bros. Towing*, 45 Bankr. 887, 890 (E.D. La. 1985).

106. See *supra* notes 92-99 and accompanying text.

107. See *supra* notes 40-43 and accompanying text.

108. The Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333 (codified at scattered sections of 11 and 28 U.S.C.).

109. 28 U.S.C. § 151 (Supp. III 1985). "In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district." *Id.*

to Title 11—the bankruptcy provision of the United States Code<sup>110</sup>—to the bankruptcy judges for that district,<sup>111</sup> and give bankruptcy judges the power to hear and determine all cases and core proceedings related to Title 11.<sup>112</sup> The Amendments also grant the district court, and thus the bankruptcy court, exclusive jurisdiction over all property belonging to the debtor and his estate, wherever such property is located.<sup>113</sup>

Title 11 includes both liquidations and reorganizations,<sup>114</sup> and the pertinent statutes make no distinction between them for the purpose of establishing the bankruptcy court's jurisdiction over the debtor's property.<sup>115</sup> The result, which renders *custodia legis* ineffective, is that the bankruptcy judge obtains exclusive jurisdiction over all property of the debtor, including vessels subject to pending maritime liens.<sup>116</sup> Such jurisdiction exists regardless of whether the debtor is involved in liquidation rather than reorganization, and regardless of whether the admiralty court was the first court to obtain jurisdiction over the vessel.

#### B. *Deemphasizing the Role of International Comity*

The emphasis that several United States courts place on the lack of international comity afforded to bankruptcy proceedings is misplaced. United States courts should not apply the doctrine of comity simply out of fear that foreign courts will not grant reciprocity to their judgments.<sup>117</sup> Instead, their primary consideration ought to be the persuasiveness of the

110. 11 U.S.C. §§ 101-1330 (1982 & Supp. IV 1986).

111. 28 U.S.C. § 157(a) (Supp. III 1985). "Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district." *Id.*

112. 28 U.S.C. § 157(b)(2)(K) (Supp. III 1985).

113. 28 U.S.C. § 1334(d) (Supp. III 1985). "The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of the estate." *Id.*

114. Liquidation procedures are codified in 11 U.S.C. §§ 701-766 (1982 & Supp. IV 1986), while reorganization procedures are found in 11 U.S.C. §§ 1101-1146 (1982 & Supp. IV 1986). *See supra* notes 50, 57.

115. *See supra* notes 111, 113 and accompanying text.

116. *See supra* notes 109-14 and accompanying text.

117. *Cunard S.S. Co. v. Salen Reefer Servs.*, 773 F.2d 452, 460 (2d Cir. 1985).

foreign judgment.<sup>118</sup> In turn, the persuasiveness of the foreign judgment must be based upon the recognition of the adjudicating court as one of competent jurisdiction.<sup>119</sup>

The competency of United States bankruptcy courts is emphasized by the fact that the bankruptcy court is a unit of the district court<sup>120</sup> and may exercise "the powers of a court of equity, law, and admiralty."<sup>121</sup> The ability of the bankruptcy court to sell a vessel free of maritime liens is thus well within the jurisdiction of the bankruptcy court and should be recognized as such by foreign courts. Consequently, there is no longer a reason for foreign courts to refuse to recognize judgments rendered by United States courts of competent jurisdiction,<sup>122</sup> whether that court be one sitting in admiralty or one sitting in bankruptcy.

It also appears, for the purposes of extinguishing maritime liens, that admiralty law considers a court to be one of competent jurisdiction if that court proceeds in rem.<sup>123</sup> Thus, if the primary requirement for execution of maritime liens is merely a proper proceeding in rem, United States District Courts in bankruptcy are courts of competent jurisdiction whose decisions concerning the execution of maritime liens deserve worldwide recognition. The grant of exclusive jurisdiction to the bankruptcy court over all property of the debtor<sup>124</sup> reaffirms that United States bankruptcy proceedings are proceedings in rem.<sup>125</sup> This in rem power gives the bankruptcy court the ability to sell a vessel free of maritime liens

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118. *Id.*

119. *See supra* text accompanying notes 87-88.

120. *See supra* note 109 and accompanying text.

121. 1 COLLIER ON BANKRUPTCY, *supra* note 100, ¶ 3.01(8)(a), at 3-101. It must be remembered that "[a] federal district court is a federal district court and has whatever powers it has whether the proceeding before it is captioned 'in bankruptcy' or 'in admiralty.'" GILMORE & BLACK, *supra* note 5, § 9-91, at 806.

122. "In nations which share our ideals of justice and concepts of procedural due process, it may almost be assumed that a final judgment of one of our courts of competent jurisdiction would be accorded deference." *Cunard S.S. Co. v. Salen Reefer Servs.*, 773 F.2d 452, 460 (2d Cir. 1985).

123. *See supra* notes 21-23 and accompanying text.

124. *See supra* notes 113-116 and accompanying text.

125. *See, e.g.*, *Acme Harvester Co. v. Beekman Lumber Co.*, 222 U.S. 300, 307 (1911) (the exclusive jurisdiction of the bankruptcy court is in rem); *Seiden v. Southland Chenilles, Inc.*, 195 F.2d 899, 904 (5th Cir. 1952) (the bankruptcy proceeding is a classic in rem proceeding).

without the fear that foreign courts will not recognize such a sale.

### C. *Promoting Judicial Economy*

When a debtor's property becomes subject to concurrent admiralty and bankruptcy proceedings, confusion arises.<sup>126</sup> While all claims related to or arising out of the debtor's bankruptcy are heard in one court,<sup>127</sup> admiralty claims may be spread all over the world.<sup>128</sup> This fragmentation undermines judicial economy.<sup>129</sup> The confusion and difficulty are only enhanced when courts remove a valuable piece of property, such as a vessel, from the bankrupt debtor's estate and allow foreclosure proceedings against that property to commence in a separate action.<sup>130</sup> There is no need to divide up the debtor's property among several courts when the bankruptcy proceedings bring all of the debtor's property, including vessels subject to maritime liens, into the bankruptcy court.<sup>131</sup>

### CONCLUSION

The millions of dollars at stake in the recent bankruptcies of major United States shipping lines calls for the recognition of a bankruptcy court's power to sell a vessel free of maritime liens. Acknowledging the power of the bankruptcy court to sell a vessel free of maritime liens prevents the dispersal of actions between admiralty and bankruptcy courts. Such a dispersal of claims forces creditors to monitor every proceeding to protect their claims and threatens the debtor with the possible inability to dispose of his property in an equitable, orderly, and

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126. GILMORE & BLACK, *supra* note 5, § 9-91, at 806.

127. *See supra* notes 113-16 and accompanying text.

128. *See, e.g.*, Carter, *supra* note 10, at 10, col. 3 (while the bankruptcy proceeding involving United States Lines, Inc., is in federal court in Manhattan, admiralty proceedings are beginning all over the United States and overseas).

129. The consolidation of the debtor's assets under the jurisdiction of the bankruptcy court "admirably serve[d] the . . . cause[s] of judicial economy." *Coastal Prod. Credit Ass'n v. O/S "Santee"*, 51 Bankr. 1018, 1021 (S.D. Ga. 1985). The court in *Coastal* referred to the policy of judicial economy in the context of reorganizations. *See id.* at 1021. However, the elimination of the distinction between reorganizations and liquidations for jurisdictional purposes, *see supra* notes 91-116 and accompanying text, calls for the maintenance of judicial economy when liquidations are involved.

130. *The Robert & Edwin*, 32 F.2d 390, 390 (D. Mass. 1929).

131. *Id.*; *see also supra* note 90 and accompanying text.

efficient manner. Because bankruptcy courts consider the claims of all creditors, including maritime lienors, and because bankruptcy proceedings bring all property of a debtor within the jurisdiction of one court, these courts may ultimately be the fairest forum in which to bring the foreclosure proceedings against a vessel that is subject to maritime liens.

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