Shifting Tides in Maritime Restructurings: Bankruptcy Courts, Admiralty Law and Transitions to Foreign Forums

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Maritime insolvencies present a uniquely challenging intersection of secured lending, admiralty law and cross-border restructuring. Vessel operators and lenders face distinctive risks: highly mobile assets with volatile valuations, "secret" maritime liens that can prime secured debt without notice, and jurisdictional tensions between bankruptcy and admiralty courts. These dynamics make maritime insolvencies among the most challenging restructurings, even when contained within a single jurisdiction. In cross-border maritime restructuring cases, practitioners are often required to develop and deploy new strategies to solve the intersecting problems of secured credit, admiralty law, and the conflicting rules of multiple jurisdictions.

Recent developments have sharpened these issues. The U.S. Supreme Court's *Harrington v. Purdue Pharma L.P.* decision constrained chapter 11 by eliminating nonconsensual third-party releases, while the United Kingdom has modernized its insolvency frameworks. High-profile cases such as Fossil Group's use of the U.K.'s Part 26A restructuring plan and New Fortress Energy's (NFE) pursuit of an English scheme of arrangement for an $8.1 billion debt-for-equity swap underscore the growing willingness of U.S.-connected enterprises to look beyond chapter 11. This article examines these trends, with particular emphasis on debtor-in-possession financing, maritime lien priorities, § 363 vessel sales, chapter 15 recognition, and whether U.S. chapter 11 remains the preferred global forum for maritime reorganizations.

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Marine Finance and Structural Vulnerabilities

Marine finance is inherently cyclical and risk-sensitive. Vessel values fluctuate dramatically with global demand, geopolitical disruptions and freight rates. While recent conditions have increased vessel demand and pricing, this has not translated into improved lender returns, as interest rate spreads have compressed across the sector.

At the core of maritime lending is the loan-to-value (LTV) ratio, which ties lender risk to the vessel's liquidation value. Vessels as collateral present unique enforcement challenges. Ships are mobile, frequently operate across jurisdictions, and may be subject to competing legal regimes. A lender's ability to realize value depends on market conditions and procedural mechanisms such as arrest and sale in local admiralty proceedings or restructuring through insolvency courts.

Maritime Liens and Priority Conflicts

Perhaps the most distinctive feature of maritime finance is the prevalence of maritime liens. These liens — arising from crew wages, necessaries and salvage — can attach to a vessel without notice and, in many cases, prime preexisting secured debt.

The priority of these liens depends on where enforcement is sought and the vessel's flag. In U.S. courts, a Preferred Ship Mortgage on a U.S.-flagged vessel under the Ship Mortgage Act enjoys priority over maritime liens for "necessaries" arising after perfection. However, a foreign ship mortgage on a foreign-flag vessel does not enjoy such priority against a U.S.-based lien for necessaries, regardless of when the claim arose. Classification and ranking of liens vary by jurisdiction, although tort claims and seaman wage claims generally enjoy "super priority" over ship mortgages regardless of flag.

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Maritime liens are often described as "secret liens" because they need not be publicly recorded to be enforceable. This creates significant uncertainty for lenders and DIP financiers, who must underwrite the risk of unknown encumbrances that could disrupt priority assumptions during restructuring.

Admiralty Foreclosure and Bankruptcy: Convergence and Conflict

The most conventional enforcement mechanism for maritime lenders is admiralty foreclosure. In the United States, an *in rem* action allows a creditor to arrest a vessel and seek its judicial sale through a federal district court sitting in admiralty. Arrest can be obtained *ex parte*, and the U.S. Marshals Service executes the seizure and sale.

Federal courts have exclusive jurisdiction over admiralty *in rem* actions under 28 U.S.C. § 1333, while bankruptcy jurisdiction arises under 28 U.S.C. § 1334. When a vessel owner files for chapter 11 after an arrest proceeding has begun, these frameworks collide.

Earlier case law favored admiralty jurisdiction under the doctrine of *custodia legis*,[1] holding that the court first exercising control over the vessel retained exclusive authority. Over time, courts shifted toward recognizing bankruptcy primacy. The U.S. Court of Appeals for the Fifth Circuit in *In re Modern Boats Inc.* established that filing a bankruptcy petition vests the bankruptcy court with *in rem* jurisdiction over estate property, including vessels subject to pre-petition arrest.[2]

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Today, the prevailing view is that the automatic stay in a bankruptcy proceeding halts admiralty foreclosure actions, preserving the debtor's ability to reorganize. As Bankruptcy Judge **Marvin Isgur** stated, "we do have legal authority to sell vessels anywhere in the world and under the Bankruptcy Code."[3] This framework enables maritime companies to pursue chapter 11 restructurings while deferring foreclosure.

DIP Financing and Maritime Collateral

DIP financing is central to any chapter 11 reorganization, but its application in maritime contexts is particularly complex. Section 364 of the Code permits a debtor to obtain secured financing, including priming liens, upon a showing of necessity and adequate protection.

In maritime cases, however, DIP lenders must navigate a layered priority scheme that includes:

- preferred ship mortgages;
- maritime lienholders with potentially super-priority claims; and
- administrative claims arising from vessel custody and maintenance.

Maritime liens complicate the ability to offer clean priming liens. Even where a DIP lender obtains court approval, questions may arise regarding priority enforceability against maritime lien claimants, particularly cross-border.

Valuation is equally important. Vessel prices are notoriously volatile, and downturns can quickly erode collateral coverage, making adequate-protection analyses difficult and discouraging lenders from extending new money without significant protections.

Cross-Border Considerations and Chapter 15

Maritime enterprises are inherently global, often operating fleets across multiple jurisdictions with creditors in different legal systems. Chapter 15 enables a foreign representative to petition a U.S. bankruptcy court for recognition of a foreign insolvency proceeding, gaining access to the automatic stay, U.S. discovery and coordinated administration of domestic assets. Through chapter 15, foreign representatives can protect assets, enforce stays and coordinate restructuring efforts. Conversely, U.S. debtors may rely on foreign courts to recognize chapter 11 proceedings and enforce restructuring outcomes.

One example of a failed cross-border maritime restructuring in the U.K. prior to the Corporate Insolvency and Governance Act 2020 was Harkand Group. Harkand entered U.K. administration and sought chapter 15 recognition to effectuate a spinoff of its U.S. and international assets. Creditors challenged recognition, arguing that the U.K. was not the companies' true center of main interests. The court ultimately granted recognition after a compromise, but the spun-off companies failed within a year and entered chapter 7 liquidation.

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A more recent illustration is the chapter 15 petition filed in May 2026 by affiliates of New York-based NFE. While primarily an energy company, NFE owns a fleet of specialized maritime vessels in the liquefied natural gas industry. Its restructuring relied upon an English scheme of arrangement exchanging approximately $8.1 billion in debt for equity, with NFE seeking recognition in the Southern District of New York.

The NFE case exemplifies modern cross-border restructuring mechanics: The English court authorized creditor meetings to vote on the scheme, while chapter 15 ensured U.S. recognition and enforcement. These tools' effectiveness depends on judicial cooperation and legal regime compatibility. Differences in lien priority rules and enforcement mechanisms can create friction, particularly where maritime liens arise under foreign law.

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Is Chapter 11 Losing Its Primacy for Maritime Restructurings?

For decades, U.S. bankruptcy courts have been the preferred forum for large maritime restructurings. However, recent developments call this dominance into question.

The U.S. Supreme Court's 2024 decision in *Harrington v. Purdue Pharma L.P.* constrained chapter 11, holding that § 1123(b)(6) does not authorize plans to extinguish claims against nondebtors without creditor consent.[4] The ruling eliminated nonconsensual third-party releases — a tool long used to shield nondebtor stakeholders in exchange for contributions to reorganization. While maritime cases rarely involve mass tort liabilities, the decision narrows chapter 11's appeal for complex restructurings where nondebtor releases serve broader settlement functions.

However, *Purdue* addressed only plenary domestic chapter 11 jurisdiction. Two spring 2025 decisions — *In re Crédito Real, S.A.B. de C.V.*[5] and *In re Odebrecht Engenharia e*

1 A point of confusion is that the phrase "*custodia legis*" has two meanings in this context. Here it refers to the doctrine that gives primacy to an admiralty court's jurisdiction over a vessel in foreclosure. The term is also used to describe certain claims in an admiralty foreclosure that are entitled to priority payment from the proceeds of the court-supervised sale of the vessel.

2 775 F.2d 619 (5th Cir. 1985).

3 *Hr'g Tr., In re Offshore Specialty Fabricators LLC*, No. 17-35623 (Bankr. S.D. Tex. Oct. 24, 2017).

4 603 U.S. 204 (2024).

5 670 B.R. 150 (Bankr. D. Del. 2025), *aff'd sub nom. In re Credito Real S.A.B. de C.V., SOFOM, E.N.R.*, 677 B.R. 192 (D. Del. 2026).

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Construção S.A.[6] — confirmed that these constraints do not extend to chapter 15. Both courts held that §§ 1521 and 1507 authorize enforcement of nonconsensual third-party releases integral to foreign restructurings. The practical implication is that a vessel operator seeking third-party release protection may find it more efficient to pursue a foreign restructuring and chapter 15 recognition than a domestic chapter 11.

Meanwhile, the U.K.'s Corporate Insolvency and Governance Act 2020 introduced debtor-friendly features including restructuring plans, moratoria and restrictions on *ipso facto* clauses. Late in 2025, Texas-based Fossil Group used Part 26A of the UK's Companies Act to restructure $150 million in bonds, concluding that U.S. chapter 11 would be too unwieldy. Similarly, NFE restructured $8.1 billion in debt through an English scheme rather than chapter 11.

These transactions represent "good forum-shopping": Restructuring systems differ in their approaches to priority revisions and in imposing losses on dissenting creditors. Although the U.K. regime remains less tested than its U.S. counterpart, its continued development — combined with London's status as a global maritime and financial center — may gradually shift forum-selection decisions. For vessel operators weighing restructuring options, the relative advantages of chapter 11 versus emerging alternatives are no longer as one-sided as they once were.

Do Bankruptcy Courts Have Authority to Sell Vessels Free and Clear?

Another recurring question concerns the authority of U.S. bankruptcy courts, as Article I courts, to sell vessels free and clear of maritime liens — a power traditionally exercised by Article III courts sitting in admiralty. Then-Judge Sonia Sotomayor, writing for the U.S. Court of Appeals for the Second Circuit, posited in *In re Millenium Seacarriers* that "a measure of uncertainty exists" as to whether bankruptcy courts can authorize such sales free and clear of maritime liens.[7]

If accepted, such challenges would have far-reaching consequences. Section 363 vessel sales would be undermined, and DIP-financing orders altering lien priorities could be questioned. This framework would significantly delay restructuring timelines, potentially requiring district court involvement for routine first-day relief.

Courts have largely rejected these arguments. The core flaw is conflating federal/state jurisdictional limits (as in *Stern v. Marshall*)[8] with conflicts between two federal statutory regimes. Admiralty and bankruptcy law both fall within the federal domain, so courts must harmonize the statutes rather than subordinate one to the other.

A more appropriate framework is the balancing approach used in contexts involving competing federal policies, such as tension between the Code and Federal Arbitration Act. Core bankruptcy matters — *e.g.*, asset sales and DIP financing — remain within bankruptcy court authority even where maritime considerations are implicated.

As a practical matter, chapter 11 debtors with significant maritime assets often voluntarily follow district court admiralty rules regarding publication of proof-of-claim bar dates to address due process concerns. In the recent *Crosby Marine Transportation LLC* chapter 11 case pending in the U.S. Bankruptcy Court for the Eastern District of Louisiana, for example, the court approved publication of the bar date notice in eight Gulf Coast newspapers and *Workboat* magazine, mirroring Supplemental Admiralty Rule C(4)'s publication requirements for vessel seizures. By adopting admiralty-style notice procedures, debtors can satisfy due process for unknown maritime lienholders while reducing constitutional challenge risk.

Navigating the Evolving Landscape

Maritime restructurings require careful navigation of a complex legal landscape. The interplay between maritime liens, secured lending, admiralty enforcement and bankruptcy jurisdiction creates challenges not found in other industries. The global nature of shipping demands strategic selection of cross-border tools and restructuring regimes.

While chapter 11 remains powerful and widely used, its dominance is no longer assured. *Harrington v. Purdue Pharma* curbed nonconsensual third-party releases in chapter 11, while *Crédito Real* and *Odebrecht* confirmed that chapter 15 can still enforce such releases integral to foreign restructurings. Meanwhile, the U.K. has modernized its insolvency framework. *Fossil Group* and *NFE* illustrate that sophisticated debtors increasingly leverage multiple legal systems' most favorable features.

These shifts are particularly relevant for maritime firms operating transitory assets. Practitioners must remain attuned to doctrinal developments and shifting market dynamics. The automatic stay, chapter 15 recognition and cross-border coordination tools remain essential for preserving enterprise value in maritime insolvencies, yet the competitive landscape for restructuring forums continues to evolve. In maritime insolvency, as at sea, the ability to adapt to changing conditions remains paramount. **abi**

6 669 B.R. 457 (Bankr. S.D.N.Y. 2025).

7 419 F.3d 83, 94 (2d Cir. 2005).

8 564 U.S. 462 (2011).