

# Client Alert

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## Rule B Lives On: Appellate Court Affirms Wire Transfer Seizures in Maritime Disputes

The attachment of an adversary's assets as security for a maritime claim is a powerful weapon in a company's litigation arsenal. On September 23, 2008, the Second Circuit Court of Appeals preserved this potent remedy by holding that funds that are the subject of electronic fund transfers ("EFTs") are "property" subject to a maritime attachment while they are in the hands of an intermediary bank. *Consub Delaware LLC v. Schahin Engenharia Limitada*, No. 07-0833 (2d Cir. Sept. 23, 2008). The Court further held that contractual clauses providing for exclusive jurisdiction in the courts of England over disputes arising from those contracts did not preclude the plaintiff from seeking a maritime writ of attachment in a U.S. District Court or divest the U.S. District Court of jurisdiction to issue such a writ.

The Rule B process of attachment is available when a plaintiff has an admiralty claim against an individual or corporate defendant who cannot be found within the district in which the action is commenced. The plaintiff must also show that "tangible or intangible personal property" belonging to the defendant is present or will soon be present in the district. Maritime writs can be a highly effective procedural instrument because they can obtain jurisdiction over defendants and obtain security for claims. Further, because shipping companies often wire funds through New York, where the intermediary clearing house banks are located, such writs force defendants to promptly acknowledge underlying claims.

Since *Winter Storm Shipping, Ltd. v. TPI*, 310 F.3d 263 (2d Cir. 2002), which first authorized EFTs attachments, maritime claimants have frozen millions of dollars through this distinctive procedural device. The *Consub* case, which revisited *Winter Storm's* analysis of EFTs, presented the Second Circuit with what one appellate judge described as the metaphysical question of whether ETFs moving

on whether maritime law, which, in the U.S., is a federal through the international banking system indeed existed as property. The answer to this question depended on whether maritime law, which in the United States is a federal question, should be guided by state law on commercial property seizures. The Second Circuit explained:

[G]iven the importance of the maritime attachment, . . . leaving the functional usefulness of Rule B attachments to the vagaries of the laws of fifty states would create a measure of anarchy in a federal scheme designed to insure that maritime actors may be sued where their property is found. Such anarchy would be inconsistent with an ancient purpose of admiralty law in providing convenient fora for those who want to enforce rights under maritime law against hard-to-catch defendants. It would also be detrimental to international commerce.

The Court concluded that New York law had no effect on the applicability of Rule B to funds involved in EFTs while they are in the hands of intermediary banks: "Because that rule is derived from federal law, there is no occasion to look for guidance in state law."

If you have any questions or would like further information concerning maritime attachments, please contact:



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