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Practical Guide to Admiralty Supplemental Rules A through E

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By

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The article below originally appeared in conjunction with the 1997 University of Texas Admiralty Seminar program, subsequently in the Tulane Maritime Law Journal, Summer 1998 Edition, and has now been updated to reflect current case law and legal developments through the present. Changes to the original article are highlighted in bold for ease of reference.

I. Introduction

This Article examines the procedures used to arrest a vessel and attach goods transported by sea with the intent of providing practical guidance to accomplish both. The Article reviews case law from the United States Court of Appeals for the Fifth Circuit, which has interpreted Admiralty Supplemental Rules A through E of the *Federal Rules of Civil Procedure* [Supplemental Rules or Rules], and addresses wrongful arrest and attachment issues. The Article does not address *in rem* forfeiture actions or seizures by governmental authorities for violations of customs laws. To place the Rules in context and provide focus to the issues, we explore the practical application of Rules A through E through the following hypothetical scenario.

■ Hypothetical

Friday afternoon, 1:00 p.m. The phone rings. An attorney from a Los Angeles law firm is calling your Houston firm, Adam Reelty. The firm represents Dundee Imports, Ltd., an American company, which simultaneously voyage chartered and shipped a cargo of ladies' crocodile high-heeled shoes, worth approximately US\$1.5 million, aboard an Australian flagged vessel, the Motor Vessel ("M/V") NO ACCOUNT, bound for Houston. NO ACCOUNT's owners are based in Sydney. During the vessel's last port call in Los Angeles, the charterer's surveyor discovered that the shoes sustained water damage in the hold when a sprinkler valve burst. The surveyor estimates damages at \$500,000. To obtain security for the damaged shoes, the shoe company wants to seize the Australian vessel when it berths in Houston at 5:00 p.m. Because of underway repairs to the sprinkler system and other engineering problems, NO ACCOUNT's arrival in Houston is more than ten days late. The charterer advised the L.A. firm that they refused to pay the freight on the shoes to the vessel's owners under the charter party's terms. The charter party provides that any dispute between the parties will be referred to London arbitration for resolution, and that English law governs the contract. The Australian vessel owner maintains a business office in the Southern District of Texas with a resident agent for service of process, but your client, Dundee Imports, does not.

From this fact situation, we pose the following questions:

- (1) Can you arrest or attach the vessel in Houston? If so, how?
- (2) Can the vessel arrest or attach the cargo in Houston? If so, how?
- (3) To release the vessel or the goods, what alternative security is required?

- (4) If not released following arrest or attachment, how do you provide for the care, custody and disposition of the seized property?

II. SUPPLEMENTAL ADMIRALTY RULE A

Rule A applies the Supplemental Rules to maritime attachment and garnishment actions, actions *in rem*, and possessory, petitory and partition actions brought within the meaning of Rule (h) of the *Federal Rules of Civil Procedure* (Federal Rules).¹ Federal Rule 9(h) provides:

A pleading or count setting forth a claim for relief within the admiralty and maritime jurisdiction that is also within the jurisdiction of the district court on some other ground may contain a statement identifying the claim as an admiralty or maritime claim for the purposes of Rules 14©, 38(e), 82, and the Supplemental Rules for Certain Admiralty and Maritime Claims. If the claim is cognizable only in admiralty, it is an admiralty or maritime claim for those purposes whether so identified or not. The amendment of a pleading to add or withdraw an identifying statement is governed by the principles of Rule 15. **A case that includes an admiralty or maritime claim within this subdivision is an admiralty case within 28 U.S.C. § 1292(a)(3).**

Rule A provides that the Federal Rules of Civil Procedure [hereinafter Federal Rules] also apply to the above maritime actions² to the extent the Federal Rules do not conflict with the Supplemental Rules.³

■ Fifth Circuit Case Law

¹ Rule A also applies the Supplemental Rules to actions for exoneration from or limitation of liability, which is beyond the scope of this Article.

² FED. R. CIV. P. 9(h). In the Southern District of Texas, Local Rule 3.J. requires that all papers arising within the court's admiralty or maritime jurisdiction bear the word "admiralty" at the top, immediately below the case number. *See* S.D. TEX. R. 3.J.

³ *See* FED. R. CIV. P. SUPP. A; *see also Humphreys v. Hal Antillen, N.V.*, Nos. 93-3799 and 93-3714, 1994 WL 682811, at *2, 1994 AMC 1794, 1796 (E.D. La. 1994) (Federal Rule 23 class action is incompatible with a limitation of liability action under Supplemental Rule F).

To claim the benefits⁴ of the Supplemental Rules, a complaint that includes admiralty and another federal jurisdictional basis must contain an "identifying statement" that the claim is an admiralty or maritime claim within the meaning of Federal Rule 9(h).⁵ In the Fifth Circuit, a complaint need not specifically refer to Federal Rule 9(h) to fall within the court's admiralty jurisdiction.⁶ A party that asserts admiralty and maritime jurisdiction within the meaning of Federal Rule 9(h), as well as another basis of jurisdiction, for example, diversity of citizenship, is not entitled to a jury trial.⁷ A party may amend its pleadings to add or withdraw a Federal Rule 9(h) designation in accordance with Federal Rule 15.⁸

A complaint that is cognizable only in admiralty is an admiralty or maritime claim for those purposes whether or not Federal Rule 9(h) is mentioned.⁹ For example, maritime *in rem* claims fall "exclusively within the purview of federal court jurisdiction,"¹⁰ as do Limitation of Liability Act claims.¹¹

In our hypothetical scenario, the arrest action could be coupled with *in personam* claims against the vessel's owners. If so, federal diversity jurisdiction may serve as a basis for jurisdiction

⁴ A variety of benefits accrue from declaring the cause of action an admiralty or maritime claim. For example, the plaintiff may recover prejudgment interest. *See, e.g., Durden v. Exxon Corp.*, 803 F.2d 845, 849-850, 1987 AMC 1666, 1673 (5th Cir. 1986). In a Rule C *in rem* action, the pilot's negligence is imputed to the vessel. *See id.* Under Rule B attachment, a plaintiff may obtain jurisdiction over an absent defendant's property. *See* FED. R. CIV. P. SUPP. B. Under both Rules B and C, the plaintiff may seize property before the entry of any judgment. *See* FED. R. CIV. P. SUPP. B, C. Under Rule F, a shipowner may limit its liability to the value of the vessel for losses occasioned without the shipowner's privity or knowledge. *See* FED. R. CIV. P. SUPP. F. *See generally T.N.T. Marine Serv. v. Weaver Shipyards & Dry Docks, Inc.*, which states:

The Federal Rules of Civil Procedure give special treatment to admiralty claims, as do the Supplemental Rules for Certain Admiralty and Maritime Claims. Special rules as to venue and interlocutory appeals apply to admiralty suits. The availability of certain maritime remedies, such as maritime attachment and garnishment, actions *in rem*, possessory, petitory and partition actions and limitation of liability, depends upon the source of jurisdiction as well.

702 F.2d 585, 586-87, 1984 AMC 1341, 1342 (5th Cir. 1983) (citations omitted).

⁵ *See, e.g., Harrison v. Glendel Drilling Co.*, 679 F. Supp. 1413, 1418 (W.D. La. 1988).

⁶ *See Teal v. Eagle Fleet, Inc.*, 933 F.2d 341, 345, 1993 AMC 1518 (5th Cir. 1991) (AMC reporter summarizing the case) (citing *Durden*, 803 F.2d at 848-50, 1987 AMC at 1670-73; *T.N.T. Marine*, 702 F.2d at 586-88, 1984 AMC at 1342-44).

⁷ *T.N.T. Marine Serv.*, 702 F.2d at 587, 1984 AMC at 1343 ("[A] suit falling under admiralty as well as diversity jurisdiction will be treated as an admiralty case for purposes of the right to a jury trial . . . if the pleading contains an 'identifying statement' asserting an admiralty or maritime claim."); *see also Durden*, 803 F.2d at 849, 1987 AMC at 1672 (Federal Rule 38(e) "provides that the identification of a claim as an admiralty or maritime claim carries with it the procedural consequences of a non-jury trial."); *Romero v. Bethlehem Steel Corp.*, 515 F.2d 1249, 1253, 1975 AMC 1905, 1909-10 (5th Cir. 1975).

⁸ *See T.N.T. Marine Service*, 702 F.2d at 588, 1984 AMC at 1344.

⁹ *See, e.g., Bodden v. Osgood*, 879 F.2d 184, 186, 1989 AMC 2312, 2314 (5th Cir. 1989).

¹⁰ *See e.g., Dluhos v. The Floating and Abandoned Vessel, Known as "New York"*, 162 F.3d 63 (2d Cir. 1998) (*in rem* action falls exclusively within admiralty jurisdiction, and cannot be brought in diversity; in *dicta*, court also noted that *in rem* action against a vessel is "unavailable in actions at law in either the state or federal courts"); *Cameron Offshore Boats, Inc. v. Alpine Ocean Seismic Surveys*, 862 F. Supp. 1578, 1583 n.6 (W.D. La. 1994); *Durden*, 803 F.2d at 849, 1987 AMC at 1671.

¹¹ *See, e.g., Vatican Shrimp Co., Inc. v. Solis*, 820 F.2d 674, 677, 1987 AMC 2426, 2430 (5th Cir. 1987).

since the matter in controversy involves corporate citizens of a state and a foreign state.¹² Because two distinct bases of jurisdiction may exist, the plaintiff's best course of action is to plead the matter as an admiralty and maritime claim within the meaning of Federal Rule 9(h).¹³

III. SUPPLEMENTAL ADMIRALTY RULE B

Rule B enables a party to assert an *in personam* claim to obtain *quasi in rem*¹⁴ jurisdiction over a defendant's property "[w]hen the defendant **cannot 'be found within the district.'**"¹⁵ Rule B allows a party to attach a defendant's property for any debt arising out of a maritime claim.¹⁶ A

¹² See 28 U.S.C.A. § 1332 (West 1993).

¹³ On the other hand, if the plaintiff is a Jones Act seaman, otherwise entitled to a jury trial, asserting admiralty jurisdiction within the meaning of Federal Rule 9(h) may deprive the seaman of the right to a jury trial. See e.g., *T.N.T. Marine Serv.*, 702 F.2d at 587; *Simmons v. Seatide Int'l, Inc.*, 693 F. Supp. 510, 511 n.1 (E.D. La. 1988) ("jury demands are to give way whenever a plaintiff makes a 9(h) designation"); *Fogleman v. Tidewater Barges, Inc.*, 747 F. Supp. 348, 353 n. 10 (E.D. La. 1990) (Federal Rule 9(h) preserves unique admiralty rules and procedures, despite other jurisdictional grounds, the most common of which are diversity of citizenship or the existence of a federal question). But see *Conti v. Sanko S.S. Co.*, 912 F.2d 816, 817 (5th Cir. 1990) (court abused discretion by refusing, without providing any "justifying reason," to allow plaintiff to amend complaint to withdraw Federal Rule 9(h) designation and thereby obtain jury trial); *Hamilton v. Unicoolship, Ltd.*, Nos. 99 Civ. 8791 and 99 Civ. 10555, 2002 U.S. Dist. LEXIS 346, at *4-5 (S.D.N.Y. Jan. 11, 2002) ("Proceedings in rem do not fall within the savings to suitors clause of 28 U.S.C. § 1333(1)."); see also *Keys v. The Sealand Honduras*, No. 97-3441 Sec. G, 1998 U.S. Dist. LEXIS 766, at *7-12 (E.D.La. Jan. 26, 1998) (same); but see *In re Dutile*, 935 F.2d 61, 63 (5th Cir. 1991) (court held that *in rem* and *in personam* admiralty claims may only be removed if complete diversity exists).

¹⁴ *Quasi in rem* jurisdiction is based upon the presence of the defendant's property within the district, and differs from *in rem* jurisdiction in that the former adjudicates the interest of particular parties to the property, whereas the latter determines the "interests in specific property as against the whole world." BLACK'S LAW DICTIONARY 1245 (6th ed. 1990); see also *Belcher Co. of Alabama, Inc. v. M/V MARATHA MARINER*, 724 F.2d 1161, 1163, 1984 AMC 1679, 1681 (5th Cir. 1984) (*quasi in rem* are actions for money damages "begun by attachment or other seizure of property when the court has no jurisdiction over the person of the defendant, but has jurisdiction over a thing belonging to him or over a person who is indebted to, or owes a duty to the defendant."); cf. *Great Prize, S.A. v. Mariner Shipping Pty., Ltd.*, 967 F.2d 157, 159, 1993 AMC 72, 74 (5th Cir. 1992) ("[G]ood-faith allegation in the complaint that the *res* is present within the geographical jurisdiction of the court is the jurisdictional fact which gives the court *in personam* jurisdiction over the defendant purported to own the *res*.").

¹⁵ *Sembawang Shipyard, Ltd. v. Charger, Inc. (The Charger)*, 955 F.2d 983, 987 (5th Cir. 1992) (emphasis added) (quoting Supplemental Rule B); see also *Heidmar, Inc. v. Anomina Ravennete di Armamento S.p.A.*, 132 F.3d 264, 267 (5th Cir. 1998) ("[A] defendant cannot be found within the district for purposes of Rule B if it is not present in the district at the time the complaint is filed."); see also *Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd.*, No. 05-5385-cv, 2006 U.S. App. LEXIS 19302, at *28-29 (2d Cir. Jul. 31, 2006) ("an attachment should issue if plaintiff shows that 1) it has a valid prima facie admiralty claim against the defendant; 2) the defendant cannot be found within the district; 3) the defendant's property may be found within the district; and 4) there is no statutory or maritime law to bar the attachment."); *Oilmar Co. Ltd., Panama v. Energy Transpt, Ltd.*, Nos. 3:03CV1121, 1125, 1147 and 1153, 2003 U.S. Dist. LEXIS 14350, at *5 (D.Conn. Aug. 18, 2003) (same); *Erne Shipping Inc. v. HBC Hamburg Bulk Carriers GmbH & Co. KG*, 409 F.Supp.2d 427, 432 (S.D.N.Y. 2006) (discussing "found within the district" test); *Seaplus Line Co. Ltd. v. Bulkhhandling Handymax AS*, 409 F.Supp.2d 316, 318-319 (S.D.N.Y. 2005) (court held that Rule B mandates issuance of attachment order once requisite showing is made by plaintiff that a maritime claim exists and defendant is not found within the district); *Board of Commissioners of the Orleans Levee Dist. v. Belle of New Orleans, L.L.C.*, No. CA 06-0017-C, 2006 U.S. Dist. LEXIS 34270, at *26-27, 53-59 (S.D. Ala. May 25, 2006) (court discusses requirements of Rule C arrest and Rule B attachments in finding that permanently moored casino boat is not a vessel for purposes of *in rem* jurisdiction, and contracts relating to it are not maritime); *Allied Maritime, Inc. v. The Rice Corp.*, No. 04 Civ. 7029 (SAS), 2004 U.S. Dist. LEXIS 20353, at *5 (S.D.N.Y. Oct. 12, 2004) (court may vacate attachment if plaintiff cannot show that it was necessary to obtain jurisdiction in a convenient district or plaintiff needs attachment to satisfy judgment obtained in the underlying suit).

¹⁶ See *Chi Shun Hua Steel Co., Ltd. v. Crest Tankers, Inc.*, 708 F. Supp. 18, 23, 1989 AMC 2551, 2557 (D.N.H. 1989); see also *Belcher Co. of Alabama, Inc.*, 724 F.2d at 1164, 1984 AMC at 1681.