As many readers are aware, one of South Korea’s largest shipping companies, Hanjin Shipping Co. Ltd. ("Hanjin"), has filed for bankruptcy. The insolvency of Hanjin, which is the world’s seventh largest container line, will have a significant impact on the global transportation and retail sector. Shippers, charterers, freight forwarders, motor carriers, terminal operators, and commercial retailers are now scrambling to reroute $14 billion worth of cargo, which is packed into 540,000 containers, and loaded onto one of Hanjin’s 141 vessels (some owned some chartered). This logistical nightmare is exacerbated by the fact that these vessels call at every major maritime port on the planet. Indeed, Hanjin’s insolvency will cause significant disruptions to the global supply chain, including material delays in the delivery of retailer goods for this upcoming holiday season.

The intent of this briefing is to provide an overview of Hanjin’s insolvency, outline which parties will be most affected by Hanjin’s collapse, and provide these affected parties with ideas for moving forward as these international insolvency proceedings unfold. Before we begin, however, a brief summary of the events leading to Hanjin’s insolvency.

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Background

After losing the support of its banks and trade creditors, Hanjin commenced insolvency proceedings in South Korea on August 31, 2016. At the time of the filing, Hanjin estimated its debt to be around six trillion won ($5.5 billion), which put Hanjin’s debt-to-equity ratio at 850%. This colossal debt is a reflection of the diminished demand in international shipping, which is a combination of too many containerships on the water and not enough Americans buying cheap exports from China. As a result, large shipping companies like Hanjin struggled to keep their container ships full.

After Hanjin filed for bankruptcy, the South Korean Court issued a comprehensive injunction and asset protection order (aka an “automatic stay”), which blocks Hanjin’s creditors from arresting or seizing Hanjin assets. The Korean Court’s protective injunction, however, only blocked creditors from arresting or seizing assets in South Korea—not globally. Luckily, for Hanjin, South Korea is a signatory to the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency (1997). This international treaty provides for the recognition of domestic insolvency proceedings in foreign jurisdictions and is designed to protect and maximize the value of an insolvent company’s assets located outside the country while that entity is engaged in domestic and foreign insolvency proceedings. Put another way, this international treaty stops creditors from seizing every asset they can that is located outside Korea in a last ditch effort to get paid. Unfortunately, the automatic stay only applies to countries that are signatories to that treaty.

On September 2, 2016, two days after Hanjin filed for bankruptcy in South Korea, Hanjin filed for protection in the United States under Chapter 15 of the Bankruptcy Code, which incorporates the UNCITRAL Model Law on Cross-Border Insolvency into American law. Again, the purpose of this reciprocal filing is to protect Hanjin assets located in the United States and to prevent certain collection actions against Hanjin’s U.S. assets, including vessel arrests, asset seizures, lien foreclosures, and contract terminations. Unfortunately, however, it wasn’t until September 6 that the Bankruptcy Court for the District of New Jersey got around to hearing the case.

The Chapter 15 Gap

During the time period between the initial August 31 filing in South Korea and the September 6 hearing in New Jersey, Hanjin was not protected by any provisions of the Chapter 15 Bankruptcy Code, such as the automatic stay that blocks creditors from arresting or seizing Hanjin assets. This is frequently referred to as the “Chapter 15 gap period,” which typically results in flood of creditor lawsuits and vessel arrests across the world. Hanjin’s Chapter 15 gap period was no different, and several lawsuits and vessel arrests commenced in the U.S. immediately. As a result, many importers and exporters now have their cargo stuck on an arrested vessel, or stuck on vessels too scared to enter ports for fear of being seized by U.S. Marshals. In other instances, U.S. terminal operators are refusing to unload Hanjin ships simply because they are concerned about getting paid. Either way, freight forwarders, shippers, and many U.S. retailers are all worried about getting their cargo (or their client’s cargo) off these ships before it’s too late.

Now What?

While the above section illustrates how Hanjin will use the UNCITRAL Model Law on Cross-Border Insolvency and its counterpart in the U.S. (Chapter 15) to prevent a creditor shakedown with its vessels and containers, the above information will not do much for shippers, freight forwarders, and U.S. retailers with stranded cargo. With that in mind, many affected parties might be asking: now what are my options? Below are a few ideas.
Option A: Take a Close look at your Insurance Policy

Without going into the myriad of potential financial exposures for shippers resulting from the bankruptcy of Hanjin, it is highly probable that there is a clause in a cargo owners ocean cargo insurance policy that may provide coverage for expenses incurred as a result of the insolvency or financial default of the owner/charterer or operator of the vessel or other conveyance. Arguably the biggest class of claims will come in the form of late deliveries. Here, cargo owners may be able to claim for damages if the market value of the cargo on the date it should have been delivered under the relevant shipping contract is more than the market value on the date it is actually delivered.

The second biggest class of claims will be from cargo owners who were transporting perishable goods. After all, refrigerated refer containers don't run on pixy dust and any interruption in the power supply could result in the deterioration of the refrigerated cargo. For example, Alaska seafood that was being shipped from the U.S. to Asia (or vis versa) is highly prone to spoilage, and it's likely that these cargo owners will inevitably look to their insurers for reimbursement if said cargo is spoiled.

The third class of claims is likely to come from cargo owners who were forced to bear additional transshipment costs (also known as “forwarding costs”) to get their cargo to its final destination. For example, if a seafood company had a few containers worth of frozen product, which was originally scheduled to be delivered to California, but instead the vessel was arrested in Prince Rupert, Canada (as was the case with the Hanjin Scarlet), the seafood company will now need to reroute that cargo from Prince Rupert down to California, thus incurring some transshipment costs. Fortunately, for the seafood company, its cargo insurance policy should have a provision that allows for recovery of these expenses, and the seafood company’s insurance underwriter will be legally forced to reimburse the cargo owner for any such charges reasonably incurred.
Option B: File a Claim Against Hanjin

The importance of filing a claim in a bankruptcy proceeding cannot be overstated. After all, absent the timely filing of a claim, a creditor is unable to share in any distribution made, or otherwise participate, in the bankruptcy case. Here, the situation is no different and parties with claims against Hanjin are urged to get their claims in before it is too late. Moreover, it’s important to note that collapse of Hanjin is not just affecting cargo owners.

There are nearly a dozen of other potential creditors who will have legal claims against Hanjin, including, port agents for outstanding agency payments, crew for unpaid salaries, vessel suppliers for unpaid invoices, haulers and rail operators for unpaid freight, port, terminals, and container yards for unpaid terminal and storage charges, freight forwarders for advanced payment of slots, container lessors for unpaid hire and recovery of containers, shipowners for unpaid charter hire, and of course banks and bondholders for any outstanding mortgages, bonds and other corporate debt that Hanjin may have. Indeed, Hanjin will have its hands full for the immediate future; provided, however, these affected parties submit their claims to the appropriate tribunal on time.

Conclusion

The Hanjin situation is in its early stages, and international bankruptcy proceedings are naturally complicated. Indeed, it should come as no surprise that these worldwide proceedings will be difficult to navigate, which means that importers/exporters, shippers, freight forwarders, and U.S. retailers with stranded cargo will need to carefully consider all options in dealing with Hanjin’s perspective rehabilitation. In the immediate future, however, it is critical that any entity with a claim against Hanjin understand that, among other things, where their claims need to be sent and provide enough delivery time so that the claim arrives before the claim bar date, especially if the claim is being sent overseas. As such, affected parties are encouraged to seek guidance in the near term to best protect their legal position and maximize their recovery.