Rule B Revisited

It is not uncommon for parties who have been sued by a third party in respect of loss or damage to seek recourse, by way of an indemnity, against another party whom they believe is responsible for the loss or damage. But can a party seeking such recourse in the US obtain security for the indemnity claim before there has been a judgment or settlement of the underlying third party claim against him?

Published 15 May 2014

That question was last considered in this publication in the context of parties who attempted to use the US legal remedy, Supplemental Rule B for Admiralty or Maritime Claims (Rule B), to obtain pre-judgment security for cargo indemnity claims governed by the Inter-Club New York Produce Exchange Agreement (ICA). [1] At that time, US courts had taken divergent views on whether a party could obtain security under Rule B for an indemnity claim where the underlying cargo claim had not yet been settled. Since then, the ICA has been amended to provide that security can be demanded for an indemnity claim by a party who has itself provided security to the cargo claimant notwithstanding that there has been no judgment or settlement. [2]

Nevertheless, the question posed above remains relevant for those cases that are not covered by the ICA either because they do not involve cargo claims or because the amended ICA has not been incorporated into the charterparty. In the U.S., the question has frequently come up in relation to applications for attachments under Rule B, which allows a maritime claimant to seek an order attaching the property of a defendant without prior notice to the defendant (although the defendant may demand a hearing after the attachment). Unless the attachment is vacated, the defendant must post a bond or other form of security to have the property released.

'Ripeness' refers to the readiness of a case to be litigated. In the US, "a claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." [3] Most cases involving Rule B attachments involve claims that are clearly ripe for adjudication: Party X sues Party Y for breach of a maritime contract or for damages suffered as the result of Party Y having committed a maritime tort. But what if Party X is seeking indemnity from Party Y for damages that Party X *may* have to pay to Party Z **if** Party X is found to be liable to Party Z? Should Party X be permitted to attach property of Party Y before Party X has been adjudged liable for or settled the underlying claim?

The courts in the US that have considered this question have not spoken with one voice. This inconsistency reflects the challenge of balancing the competing – and often legitimate – interests of the parties: the claimant's interest in being able to actually enforce its claim against an indemnitor who may be insolvent or no longer in existence by the time the indemnity claim is 'ripe'; and the potential indemnitor's interest in not having its property attached without notice (and having to post security to release it) when the indemnity claim being secured by the attachment has not yet accrued and may indeed never materialise.

The following article written by Francesco DeLuca, [4] a third year law student at Boston University School of Law, examines the often unpredictable state of the law in this area.

The Peripheries of Rule B: Attachments for Maritime Indemnity Claims Rule B of the Supplemental Rules for Admiralty or Maritime Claims (Rule B) offers maritime claimants a means of securing their claims on a pre-judgment basis by attaching property belonging to the defendant pursuant to an order issued by a US federal court without prior notice to the defendant. A Rule B attachment is proper "if the 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 bar to the attachment." [5] A "valid prima facie admiralty claim" is a claim that (1) "sounds in admiralty," and (2) is "facially sound" [6] or "ripe." [7] Federal law governs the former inquiry; the "relevant substantive law" controls the latter. [8] Accordingly, a claim is ripe when it is "justiciable, under the substantive law governing the contract giving rise to the parties' dispute." [9]

In the vast majority of cases, a practitioner versed in admiralty law can accurately predict whether a court will grant or uphold a Rule B attachment. However, in some cases, notably those involving claims for indemnity, courts have granted Rule B attachments in circumstances where entitlement to an attachment seemed questionable. In other cases, courts have declined to grant or have vacated attachment orders on the basis that the indemnity claim was 'unripe'. Indeed, eminent judges have provided conflicting answers in the same case. [10]

With the 2011 amendment of Section 9 of the Inter-Club New York Product Exchange Agreement (ICA), some of this uncertainty has been removed for cargo claims that are covered by the ICA. However, for other cases involving claims for indemnity, the availability of a Rule B attachment is still very much subject to a fact-specific inquiry concerning the 'ripeness' of the claim and, in some instances, the court's willingness to find extraordinary circumstances that allow it to exercise its discretionary authority to allow the Rule B attachment.

1 Attachments for marginally ripe and manifestly unripe indemnity claims
Without question, "where a plaintiff has actually incurred liability ..., [an indemnity] claim clearly is ripe, and an attachment may issue." [11] Beyond this fundamental precept, the law is less certain. Thus, although there are decisions holding that to incur liability sufficient to ripen a claim, a plaintiff must pay a claim and not merely post security, [12] there is also authority to the contrary. [13]

Generally, unripe indemnity claims will not support an attachment order. [14] When addressing the issue of ripeness, US courts have implicitly relied on the "equity of the situation" before them. [15] Moreover, even if a court finds that a claim is unripe, it retains the equitable discretion to allow an attachment in limited circumstances. [16] This exception applies where "the plaintiff [is] *likely* to incur liability from a third party." [17]

a Cases Upholding Attachments In some cases where liability was by no means inevitable, courts have upheld attachments based on maritime indemnity claims. One line of cases has held that the onset of litigation between the plaintiff seeking an attachment and a third party can provide sufficient grounds for upholding an attachment of the defendant's property. [18] On this point, the court's decision in *Staronset Shipping Ltd. v. N. Star Nav. Inc.* is instructive. [19] In *Staronset* , Staronset Shipping chartered its vessel to North Star Navigation. A stevedore, seeking payment for its services, had Staronset's vessel arrested. [20] Staronset then alleged that, because North Star had hired the stevedore, only North Star could be liable for the stevedore's fees. [21] On these grounds, Staronset sought to attach property belonging to North Star as security for the stevedore's claims. [22] Finding Staronset's concerns "reasonable," the court upheld the attachment. [23]

Additionally, arbitration involving the plaintiff and a third party to whom he may be liable can support an attachment in some instances. For example, in *Daeshin Shipping Co. v. Meridian Bulk Carriers, Ltd.* , Daeshin Shipping sub-chartered a vessel from PanOcean, which had chartered her from her owner. [24] Daeshin then sub-chartered the vessel to Meridian Bulk Carriers, who, in turn, sub-chartered her to Al Kahlejia. [25] After the vessel was returned to her owner, her owner and PanOcean asserted, amongst other claims, a claim for physical damage against Daeshin. [26] Daeshin subsequently attached Meridian's property, and Meridian sought to vacate the attachment. [27] Specifically, Meridian argued that the indemnity claim was unripe with respect to the amount attached for the physical damage claim. [28]

Although neither PanOcean nor the vessel's owner had brought suit against Daeshin, [29] the underlying disputes between the parties were subject to arbitration in London. [30] By the time Meridian had moved to vacate Daeshin's attachment order, the parties had not exchanged Points of Claim in the arbitration, but they had agreed upon arbitrators and had circulated claims for specific damages amongst themselves. [31] On these facts, the court found that the arbitration had progressed to such a point that Daeshin could reasonably believe it faced potential liability. [32] Accordingly, the court declined to vacate Daeshin's attachment order with respect to the amount claimed in connection with the underlying physical damage claim. [33]

Similarly, where a plaintiff is in the midst of arbitration with the defendant and litigation with a third party, courts have upheld the plaintiff's Rule B attachment. In *Navalmar (U.K.) Ltd. v. Welspun Gujarat Stahl Rohren, Ltd.* , Navalmar U.K. chartered a vessel to Welspun Gujarat Stahl Rohren (WGSR) to ship cargo from Turkey to Yemen. [34] While the cargo was being discharged in Aden, the consignee discovered that the cargo was damaged. [35] Consequently, the consignee filed suit in Aden and had the vessel arrested. [36] Upon Navalmar's filing security in the form of a USD 1,000,000 bank guarantee, the court in Aden released the vessel. [37] The consignee's claims remained pending in Aden when Navalmar sought to attach WGSR's property in New York. [38]

In addition to defending against potential liability in Aden, Navalmar had commenced arbitration against WGSR in London for wrongfully withheld hire. [39] Before Navalmar had brought suit in New York, "the arbitrators [had] granted Navalmar an interim award for withholding hire of USD 271,350 plus interest, finding that WGSR's loss of use of the vessel was not 'the consequence of any breach of charter on the part of [Navalmar].'" [40] At the time of the suit, WGSR had not paid the award. [41]

In aid of the London arbitration, Navalmar sought to attach WGSR's property in New York. [42] Specifically, Navalmar sought security for the interim award in the London arbitration, the bank guarantee posted as security for the vessel's release in Aden, and the legal fees associated with the proceedings in Aden and London. [43] The court found that Navalmar's indemnity claim was ripe and upheld the Rule B attachment because Navalmar had (1) provided security to release its vessel, and (2) received an interim award against WGSR. [44]

b Cases Vacating Attachments In many instances where the party seeking an attachment for an indemnity claim had only speculative liability for the underlying dispute, courts have vacated attachment orders. Generally, courts will not uphold attachments merely because a third party has submitted a claim letter to the plaintiff. [45] *Beluga Chartering GMBH v. Korea Logistics Sys. Inc.* presents a straightforward application of this rule. [46] In that case, Beluga Chartering GMBH was the operator of a ship chartered by Korea Logistics Systems to deliver goods to Samsung. [47] Beluga's vessel experienced turbulent weather during her voyage, and Beluga asserted the following claims for damages against Korea Logistics: "vessel damage, demurrage, port of refuge expenses, deviation and bunker expenses arising out of the alleged failure of Korea Logistics to properly load and stow the cargo." [48] The court upheld a Rule B attachment in Beluga's favor. [49] More significantly, Korea Logistics sought countersecurity based on a letter it had received from Samsung, which stated "[i]f no appropriate actions are taken, we shall deal with this case using all available means and methods." [50] The court denied countersecurity for Korea Logistics on the grounds that it did not have a valid *prima facie* claim and that the claim letter could not support countersecurity for an unripe claim. [51]

When the underlying dispute is subject to arbitration, arbitration must commence before a court will consider upholding a Rule B attachment for an indemnity claim. [52] However, even if arbitration has commenced, courts may still vacate Rule B attachments. The Southern District of New York's decisions in *REA Navigation, Inc. v. World Wide Shipping Ltd.* [53] and *Sonito Shipping Co. v. Sun United Mar. Ltd.* [54] are examples of such cases. [55]

In *REA Navigation, Inc.* , Metal Construction of Greece S.A. (Metka)had entered into a contract with Karachi Electric Supply Corporation) to build a power plant in Pakistan. The contract included a liquidated damages clause that Metka would be responsible for Karachi Electric's damages resulting from Metka's delay in completing the construction project. [56] World Wide Shipping chartered a vessel from REA Navigation to transport cargo for Metka to Pakistan. [57] During her voyage, the vessel called at Jeddah, where "authorities detained the ship, as its class certification had expired." [58] To conduct a routine inspection of the vessel, the authorities in Jeddah unloaded the cargo, allegedly damaging it. [59] World Wide eventually delivered the cargo to Karachi Electric in Pakistan. [60] However, Metka filed suit against REA Navigation on the grounds that its "failure to maintain proper class certification ... had caused damage to Metka's cargo and increased the likelihood that Metka would not complete the construction project in time, resulting in liquidated damages." [61] Metka subsequently had REA Navigation's vessel arrested in Pakistan. REA Navigation's insurers provided a bond to release the vessel. [62]

To recover the funds necessary to secure the release of its vessel, REA Navigation commenced arbitration for indemnification in London and attached WWS's property in New York. [63]

Reviewing REA Navigation's attachment order, the court addressed whether REA Navigation's indemnity claim was ripe under English law, the substantive law that governed the dispute. [64] The court found that REA Navigation's claim was not ripe because the "issuance of a bond to secure the release of the vessel does not constitute a final resolution of Metka's claims." [65] Accordingly, the vacated the attachment order. [66]

A similar decision was arrived at in *Sonito Shipping Co. v. Sun United Mar. Ltd.* [67] In that case, Sonito Shipping chartered a vessel to Sun United Maritime to carry rice from India to Nigeria. [68] When the rice was delivered, the cargo receivers complained that some of the rice was damaged and that some of the rice was missing. [69] As a result, the cargo receivers commenced arbitration in London to assert their claims against Sonito. [70] Sonito, in turn, attached Sun United's property in New York to serve as security for its potential liability to the cargo receivers and to cover its fees associated with the arbitration. [71]

Summarising the relevant facts, the court stated: "It is common ground that the arbitration is just getting started, the arbitrators have not made any award, and Sonito has not made any payment to the cargo interests in respect of their claims." [72] On these facts, the court found that Sonito's claim against Sun United was unripe and that the case did not present extraordinary circumstances warranting an attachment order for an unripe claim. [73] Hence, the court vacated the attachment order. [74]

2 Section 9 of the Inter-Club New York Produce Exchange Agreement 1996 (As amended September 2011) Where the underlying dispute is a cargo claim and the charterparty has incorporated the ICA as amended in 2011, a discussion of the foregoing authorities is likely unnecessary because Section 9 now provides: "If a party to the charterparty provides security to a person making a Cargo Claim, that party shall be entitled upon demand to acceptable security for an equivalent amount in respect of that Cargo Claim from the other party to the charter party ... " Accordingly, if an owner or charterer has provided security to a cargo claimant in a case where the charterparty incorporates the amended ICA, he is contractually entitled to receive security and should therefore have little difficulty establishing the 'ripeness' of his claim for purposes of obtaining that security through a Rule B attachment.

Conclusion Given the divergent decisions analysed above, it can be difficult to predict under what circumstances a judge will hold that an indemnity claim is sufficiently ripe so as to support a Rule B attachment. Additionally, following the decision of the Second Circuit Court of Appeals in *Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd* , it is not clear whether courts may exercise inherent equitable discretion to uphold attachment orders for unripe claims. [75] As a result of this uncertainty, a court that is asked to determine whether a Rule B attachment securing an indemnity claim should be upheld will only be loosely guided by precedent and will likely opt to conduct a fact-specific inquiry.

Questions or comments concerning this Gard Insight article can be e-mailed to the Gard Editorial Team .

[1] Gard News, Issue No. 188, November 2007/January/2008, "US Law – Hold that attachment". [2]Section 9, Inter-Club New York Produce Exchange Agreement 1996 (as amended September 2011). [3] Texas v. United States, 523 U.S. 296, 300 (1998), citing Thomas v. Union Carbide Agricultural Products Co., 473 U.S. 568, 581 (1985) (quoting 13A C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure s. 3532, p. 112 (1984)). [4] B.A., Roger Williams University; J.D. expected May, 2014, Boston University School of Law. [5] Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd., 460 F.3d 434, 445, 2006 AMC 1872, 1884-885 (2d Cir. 2006) (Walker, C.J.), overruled on other grounds by Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd., 585 F.3d 58, 61, 2009 AMC 2409, 2420 (2d Cir.2009) (Cabranes, J.). [6] Al Fatah Int'l Nav. Co. v. Shivsu Canadian Clear Waters Tech. (P) Ltd., 649 F. Supp. 2d 295, 298, 2010 AMC 523, 527 (S.D.N.Y. 2009) (Chin, J.). [7] N. Shipping Co. v. Ocean Eleven Shipping Co., 09 CIV. 4154, 2009 WL 1740025, at *2 (S.D.N.Y. June 19, 2009) (Chin, J.) ("Here, the issue is whether an indemnity claim satisfies the requirement that a plaintiff seeking an attachment must show a valid prima facie admiralty claim... The issue, specifically, is one of ripeness."). [8] Blue Whale Corp. v. Grand China Shipping Dev. Co., 722 F.3d 488, 495 (2d Cir. 2013) (Wesley, J.). [9] Vencedor Shipping Ltd. v. Ingosstakh Ins. Co., 09 CIV. 4779, 2009 WL 2338031, at *2 (S.D.N.Y. July 29, 2009) (Sullivan, J.). [10] In the seminal case of Greenwich Marine, Inc. v. S. S. Alexandra, Judge Thurgood Marshall wrote the majority opinion, which held that the indemnity claim was unripe. See 339 F.2d at 905. 1965 AMC at 80-81. In dissent, Judge Friendly disagreed and concluded that the indemnity claim was ripe. See id. at 909, 1965 AMC at 112 (Friendly, J., dissenting). [11] N. Shipping Co. v. Ocean Eleven Shipping Co., 09 CIV. 4154, 2009 WL 1740025, at *2 (S.D.N.Y. June 19, 2009). [12] See Aosta Shipping Co. v. OSL S.S. Corp., 594 F. Supp. 2d 396, 399, 2009 AMC 1692, 1695 (S.D.N.Y. 2009) (Rakoff, J.) ("The posting of security, however, is not the equivalent of a compromise or settlement of a claim, and, without more, does not ripen a claim for indemnification."), vacated on other grounds, 350 F. App'x 505 (2d Cir. 2009); Sanko Steamship Co., 536 F. Supp. 2d at 367, 2008 AMC at 1348 ("[A]n indemnity claim under the ICA is not ripe until the underlying cargo claim has been paid ..."). [13] Navalmar (U.K.) Ltd. v. Welspun Gujarat Stahl Rohren, Ltd., Navalmar U.K. (Navalmar) 485 F. Supp. 2d 399, 400, 2007 AMC 1033, 1034 (S.D.N.Y. 2007) (Hellerstein, J.). [14] See Beluga Chartering GMBH v. Korea Logistics Sys. Inc., 589 F. Supp. 2d 325, 330, 2009 AMC 1232, 1240 (S.D.N.Y. 2008) (Sweet, J.). [15] See Sanko Steamship Co. v. China Nat. Chartering Corp., 536 F. Supp. 2d 362, 366, 2008 AMC 1343, 1347 (S.D.N.Y. 2008) (Marrero, J.). [16] Patricia Hayes Associates, Inc. v. Cammell Laird Holdings U.K., 339 F.3d 76, 82, 2003 AMC 2357, 2364 (2d Cir. 2003) (Parker, J.) ("[A] district court may in some circumstances disregard the prematurity of a plaintiff's claim as a matter of discretion ..."); Greenwich Marine, Inc. v. S. S. Alexandra, 339 F.2d 901, 906, 1965 AMC 76, 82 (2d Cir. 1965) (Marshall, J.) (acknowledging that courts will issue orders of attachment based on unripe indemnity claims in "isolated cases"); In re Complaint of Murmansk Shipping Co., 2002 AMC 2495, 2500 (Vance, J.) (E.D. La. June 18, 2001) ("The Court therefore finds it equitable to maintain the attachment."); The Lassell, 193 F. 539, 543 (E.D. Pa. 1912) ("It is settled that a suit may sometimes be brought in admiralty before the cause of action accrues ..."). At least one court has interpreted Judge Marshall's opinion – when he was a Second Circuit judge before his elevation to the Supreme Court – in Greenwich Marine to mean that courts have the discretion to transform unripe claims into ripe claims. See Staronset Shipping Ltd. v. N. Star Nav. Inc., 659 F. Supp. 189, 191, 1987 AMC 1932, 1934 (S.D.N.Y. 1987) (Knapp, J.). Though this is not a fair reading of Greenwich Marine, it is a fair statement of practice in US courts. See Sanko Steamship Co., Ltd., 536 F. Supp. 2d at 366, 2008 AMC at 1347. [17] J.K. Int'l, Pty., Ltd. v. Agriko S.A.S., 2007 AMC 783, 789 (S.D.N.Y. Feb. 13, 2007) (Karas, J.). [18] In

re Complaint of Murmansk Shipping Co., 2002 AMC at 2500; Staronset Shipping Ltd., 659 F. Supp. at 191, 1987 AMC at 1934. [19] 659 F. Supp. 189, 1987 AMC 1932 (S.D.N.Y. 1987). [20] Id. at 190. [21] Id. [22] Id. [23] Id. at 191. [24] Daeshin Shipping Co. v. Meridian Bulk Carriers, Ltd., 05 CIV. 7173, 2005 WL 2446236, at *1 (S.D.N.Y. Oct. 3, 2005) (Buchwald, J.). [25] Id. [26] Id. [27] Id. [28] Id. at 2. [29] Id. at 2. [30] Id. at 1. [31] Id. at 2. [32] Id. [33] Id. [34] 485 F. Supp. 2d 399, 400, 2007 AMC 1033, 1034 (S.D.N.Y. 2007) (Hellerstein, J.). [35] Id. at 400, 2007 AMC at 1034. [36] Id. at 400, 2007 AMC at 1034. [37] Id. at 400-01, 2007 AMC at 1034-035. [38] Id. at 400, 2007 AMC at 1034. [39] Id. at 400, 2007 AMC at 1035. [40] Id. at 400-01, 2007 AMC at 1034-35 (first alteration added). [41] Id. at 401, 2007 AMC at 1035. [42] Id. at 401, 2007 AMC at 1035. [43] Id. at 401, 2007 AMC at 1035. [44] Id. at 405, 2007 AMC at 1041. [45] Beluga Chartering GMBH v. Korea Logistics Sys. Inc., 589 F. Supp. 2d 325, 330, 2009 AMC 1232, 1240 (S.D.N.Y. 2008) (applying US and English law); Precious Pearls, Ltd. v. Tiger Int'l Line Pte Ltd., 07 CIV. 8325, 2008 WL 3172998, at *2-3 (S.D.N.Y. July 31, 2008) (Koeltl, J.) (applying English law). But see Hibiscus Shipping, Ltd. v. Novel Commodities S.A., No. 04 Civ. 2344, at 3-4 (S.D.N.Y. July 8, 2004) (Berman, J.) (upholding attachment where plaintiff had received a claim letter from a third party). The continuing viability of Hibiscus is doubtful, as Hibiscus was decided before the Second Circuit's opinion in Aqua Stoli. See Precious Pearls, Ltd., 07 CIV. 8325, 2008 WL 3172998, at *3. (finding claim letter insufficient to uphold attachment order and citing Aqua Stoli as limiting a court's discretion to uphold a maritime attachment order for an unripe claim). [46] 589 F. Supp. 2d at 329, 2009 AMC at 1239. [47] Id. at 326, 2009 AMC at 1233-234. [48] Id. at 326, 2009 AMC at 1234. [49] Id. at 327-29, 2009 AMC at 1234-38. [50] Id. at 330, 2009 AMC at 1239. [51] Id. at 330, 2009 AMC at 1240. The United States District Court for the Southern District of New York decided this case before the Second Circuit Court of Appeals squarely held that the substantive law governing the dispute determines whether a party has a valid prima facie admiralty claim. See Blue Whale Corp. v. Grand China Shipping Dev. Co., 722 F.3d 488, 495 (2d Cir. 2013). In the absence of definitive guidance, the district court in Beluga explicitly found that Beluga had stated a valid prima facie admiralty claim under both US and English law. Beluga Chartering GMBH, 589 F. Supp. 2d at 328, 2009 AMC at 1236. [52] Bottiglieri Di Na Vigazione Spa v. Tradeline LLC, 472 F. Supp. 2d 588, 589, 591 2007 AMC 1013, 1013-014, 1016 (S.D.N.Y. 2007) (Kaplan, J.), aff'd 293 F. App'x 36, 37 (2d Cir. 2008). [53] 2009 AMC 1685 (S.D.N.Y. Mar. 9, 2009) (Scheindlin, J.). [54] 478 F. Supp. 2d 532 (S.D.N.Y. 2007) (Haight, J.). [55] Although REA Navigation, Inc. and Sonito Shipping Co. involved English law, there is no reason to suppose that the cases would have turned out differently under U.S. law. See supra note 48. [56] 2009 AMC at 1687. [57] Id. at 1685-686. [58] Id. at 1687. [59] Id. [60] Id. [61] Id. at 1688. [62] Id. [63] Id. [64] Id. at 1690-691. [65] Id. [66] Id. at 1691. [67] 478 F. Supp. 2d 532, 544, 2007 AMC 1018, 1032 (S.D.N.Y. 2007). [68] Id. at 534, 2007 AMC at 1019. [69] Id. at 534, 2007 AMC at 1019. [70] Id. at 534, 2007 AMC at 1019. [71] Id. at 534, 2007 AMC at 1019. [72] Id. at 540, 2007 AMC at 1022. [73] Id. at 543-44, 2007 AMC at 1031-032. [74] Id. at 544, 2007 AMC at 1032. [75] Citing Aqua Stoli.,supra, fn 2, several district court judges have questioned their authority to uphold an attachment order over an unripe maritime indemnity claim. See, e.g., REA Navigation, Inc. v. World Wide Shipping Ltd., 2009 AMC 1686, 1690 (S.D.N.Y. Mar. 9, 2009); Precious Pearls, Ltd. v. Tiger Int'l Line Pte Ltd., 07 CIV. 8325, 2008 WL 3172998 (S.D.N.Y. July 31, 2008); Bottiglieri Di Na Vigazione Spa v. Tradeline LLC, 472 F. Supp. 2d 588, 591, 2007 AMC 1013, 1016 (S.D.N.Y. 2007); Sonito Shipping Co., Ltd. v. Sun United Mar. Ltd., 478 F. Supp. 2d 532, 543-44, 2007 AMC 1018, 1031-032 (S.D.N.Y. 2007).