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Bankruptcy & International Shipping Issues: 3 Things for a Non-Industry Person

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The world of international shipping and customs is often extraordinarily complex – and that is without any bankruptcy issues to consider. But, in understanding the generalized players, rules and expectations for international shipping, those who become involved with the industry when a bankruptcy occurs will be able to navigate the field efficiently and effectively.

This article will provide some nuts and bolts of what to expect should the bankruptcy and international shipping worlds intersect.

Background & Terms:

In the United States, the two most common forms of international shipping for goods being shipped into or out of the

United States are by air and sea. Significantly smaller amounts of goods come through our borders by rail or land. In all cases, though, for importing and exporting, the goods must pass through a customs-clearance process. The clearance process is



About the Author

Leah A. Brndjar worked in the international shipping industry for several years before become an attorney, serving in both operational and management capacities for an international logistics firm. A 2010 graduate of Seton Hall University, Leah trained as a bankruptcy attorney in the early years of her legal career, and has since transitioned to a civil defense litigator. This insider experience, combined with her legal training, provides clients with creative solutions to the ever-changing field of play as an associate in the firm of Goldberg Segalla, practicing in their office in Princeton, NJ.

KEY POINTS

1. Know the players, terms and processes
2. Balance the expectations when a bankruptcy issue arises – it is a complicated process!

governed by the U.S. Customs and Border Protection Agency.

Each of these modes of transportation has its own set of protocols and procedures. As one might expect, ocean freight moves through sea ports; air freight moves through airports; and rail and truck carriers have multiple ports of entry into and out of the United States. Understanding the basic details of a particular shipment (or set of shipments) is critical to understanding what steps may need to be taken if any of the players are involved in a bankruptcy proceeding.

The shipping industry is very terms-of-art intensive. The experts in the field (and the documents associated with it) speak a language that may be difficult for the average layperson to understand. A general glossary of some of the most frequently used terms may serve as useful for newcomers:

TERM	TRANSLATION
Broker	Usually means a U.S. Licensed Customs Broker
Carrier	The transporter of goods – i.e., an airline, an ocean carrier, a rail company or trucking company
Consignee	Entity to whom a shipment is being delivered
Consignor	Entity from whom a shipment is being sent
Freight Forwarder	A party who facilitates the shipment of goods for a fee, but does not own any transportation operations itself
Demurrage	Forced storage because of unpaid customs fees
Importer / Exporter	An entity that is responsible to the U.S. for whatever goods are being imported or exported (i.e., fees, regulatory compliance, etc.) The importer / exporter is often a different entity than the one who ultimately receives or sends the goods.
INCO-TERMS (EXW, CFR, PPD, FOS, CIF, FOB, etc.)	International Commerce Terms that describe the relationship between the parties involved in the shipping transaction, and describe who is responsible for what throughout the course of the shipment, i.e., payments, duties, compliance, delivery method, etc.

THE PLAYERS:

As evidenced from the glossary, one of the most complex things to understand in international shipping is that there are often many different entities involved in just one shipment. The smaller a player is in the market of importing or exporting, the more likely it is that there will be several entities involved in facilitating even just one shipment. The bigger the player – like the Walmart's or Amazons of the world – the fewer parties will

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be involved, because the size of their market share allows for a fairly centralized and often internalized process for their international shipping needs.

Understanding the basic roles of each type of entity is important if any one of them becomes involved in a bankruptcy of any sort. As an example, let's track an exemplar shipment of goods from China to the United States. Company A is a Chinese company that is the exporter in China. Company A may or may not be the manufacturer or the original warehouse location of the goods when they start off, but for our purposes assume that Company A delivers the goods to the sea port. A Freight Forwarder is hired, Company B, to facilitate the movement from Company A to the end user. Company B helps Company A arrange delivery to the Chinese sea port.

At the sea port in China, the goods are put onto Sea Carrier C's boat. While on the water for the three-week voyage, the shipment paperwork is being prepared for customs clearance. While awaiting arrival at the sea port in the United States, Company B hires Company D to handle customs clearance. Company D is a licensed broker, and is obligated to pay duties on behalf of Company E, the end user. Company D pays duties and taxes on behalf of Company E, the end user. Once customs has been cleared, Company E picks up the freight from the American port and delivers it to Company F.

With this example, no fewer than six companies have 'touched' the goods – either physically or technologically. At any point during the shipment, if any one of those companies makes any missteps, the goods can be whisked away by the carrier, or the government, for storage and/or penalties. If any of the involved parties' files bankruptcy, it will most certainly delay the goods from proper processing, and fees will be incurred that likely will be attributable to the defaulting party.

THE EXPECTATIONS:

If any bankruptcy issue comes into play with a company that is involved in international shipping, understanding what role that company plays is the first question to ask. Next, determining whether any shipments are in process is a time-sensitive and critical issue to evaluate. Any delays at any phase could cause significant penalties. If any duties, taxes or penalties are due to the United States Government at the time that an entity files bankruptcy, the United States may have a priority claim.

Since international shipping is already a complex process, it is important to balance any expectations one might have in the event of a bankruptcy. Resolving issues can be time consuming and challenging. Having a generalized understanding of the different parties and stages should help facilitate the process. ■