Rule B and its Impact on the Transactional World

By Lawrence Rutkowski and Jonathan Stoian

I. Introduction

As of late, there has been much clamor about Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims ("Rule B"). Until fairly recently, however, Rule B was likely known to only the most well versed admiralty practitioner. Rule B, a marked variant from the general law, owes its existence to the transitory nature of the maritime industry and related shipping assets. Vessels travel from port to port and may vanish from the view and reach of their owner's or charterer's creditors; other assets may be reachable only in distant and inaccessible jurisdictions or hidden behind corporate veils, perhaps leaving creditors without security on unpaid maritime contracts. Rule B has great benefits to those creditors, but that benefit is now having a major impact (and polarizing effect) on the way the shipping business is being conducted, including shipping finance.

The current proliferation of attachments under Rule B has become all too familiar to shippers, owners, charterers, bankers, and other related parties within shipping finance. In particular, the attachments of electronic funds transfers ("EFTs"), the transfer of money by wire from one party to another, in the Southern District of New York has provoked considerable outcry from the banking community (while also becoming a cottage industry for a select group of maritime practitioners). In fact, it has been estimated that Rule B cases now account for over one third of the current caseload on the docket in the Southern District.[1]

Since Judge Haight declared in the now infamous *Winter Storm* case that EFTs are attachable property, use of the rule has grown into the vanguard maneuver of most shipping disputes. The current economic climate has precipitated a vastly increased use of this historical remedy.

II. A Short Primer on Rule B

Rule B provides for an extraordinary remedy to creditors – particular to maritime law. Rule B permits pre-trial, *ex parte* attachment; the significance of this procedure being that the debtor need not be aware of the complaint before its assets are seized. Also, a plaintiff is not required to post security to initiate a Rule B action, which limits the transaction costs and risks associated with bringing a legal claim against a debtor. To attach and/or garnish the property of a debtor, (i) the cause of action asserted by a plaintiff must arise within the court's admiralty jurisdiction, i.e., a "maritime claim," and (ii) the debtor must not be "found" within the district. Provided that a plaintiff can meet this two-part showing, it may commence an attachment of the debtor's tangible or intangible property that is found within the relevant jurisdiction.[2] Historically, there are two recognized purposes for Rule B: (1) to compel the defendant's appearance in the maritime action and (2) to provide security for the plaintiff's underlying claim.[3]

Rule B can catch a company off-guard at virtually any point before, during, or even after arbitration or litigation of the underlying claim. Also adding to the ramifications of Rule B is that the rule can be used to obtain security for maritime claims being litigated or arbitrated elsewhere, including outside the United States. Indeed, today, Rule B is used most frequently to provide security for arbitration or litigation in foreign jurisdictions. Rule B has become the primary tactic for many plaintiffs as they surprise defendant companies with attachment before the counterparty can protect its assets and, as such, has become an important arrow in the quiver for a plaintiff with a maritime claim.

III. Expansion of Maritime Claims

An important subject that those in shipping need to appreciate is what constitutes a maritime claim these days. The guidelines seem to change unexpectedly as Rule B evolves with developing case law. A maritime claim is determined by the nature and character of the contract. One court defined the analysis as such: "The threshold question . . . is whether the underlying transaction giving rise to the claim had maritime commerce as its principal objective."[4] This test has also been stated in slightly less jurisprudential fashion as "does the contract have a 'salty flavor'?"[5]

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[1] *See*, Lloyd's List, March 10, 2009, at 7.

[2] *See Winter Storm Shipping, Ltd. v. TPI*, 310 F.3d 263, 268 (2d Cir. 2002).

[3] *See id.*

[4] *Crossbow Cement SA v. Mohamed Ali Saleh Al-Hashedi & Bros.*, 2008 U.S. Dist. LEXIS 98319 (S.D.N.Y. Dec. 4, 2008).

[5] *See Kalafrana Shipping, Ltd. v. Sea Gull Shipping Co. Ltd.*, No. 08 Civ. 5299, 2008 U.S. Dist. LEXIS 78247 (S.D.N.Y. Oct. 2, 2008).

Recently, Southern District judges have extended the reach of Rule B as they continually redefine and expand the definition of maritime claims. There are several types of contracts integral to vessel financing that are without doubt identifiable to those in the industry as being maritime contracts, for example, the ship mortgage or a charter party agreement. Several recent cases of interest concerning garnishment of assets in the Southern District have acted to expand the bounds of this concept further, thus making more and more contracts that are common ancillary contracts to shipping finance susceptible to Rule B.

1. Is it Salty Enough?

In contraposition to the traditional viewpoint - longstanding over a century - that vessel-sale agreements are not subject to maritime jurisdiction, a breach of contract claim for the sale of a vessel was recently broadly declared in *Kalafrana* to be a maritime claim.[6] While the case dealt with a Memorandum of Agreement on a secondhand vessel, one must consider the prospect that a shipbuilding contract may soon be determined to be "salty" enough in nature to give rise to a maritime claim as well. The change of position in *Kalafrana* was attributed to recent cases in the Supreme Court and Second Circuit that were said to have altered the landscape of maritime claim analysis, allowing for the expansion. Whatever the historical rationale of the traditional view, it is worth noting that *Kalafrana* seems to be congruent with developing general principles of international maritime law.[7]

Yet, while *Kalafrana* is an important decision, one of the main drivers of the expansion of the use of Rule B has been the heightened volatility in the freight markets and the growth by many players in the maritime arena of the use of forward freight agreements ("FFAs"), either as hedges against market volatility or as speculative financial tools. Many Rule B claims are made in connection with FFAs because they have been declared to be maritime contracts subject to Rule B attachment in *Brave Bulk Transport Ltd. v. Spot On Shipping Ltd.*[8] Many in shipping find this a perplexing outcome because most participants in the maritime industry view FFAs as swap agreements, i.e., derivatives contracts, not as maritime contracts akin to charterparties. While it is indisputable that FFAs are related to the freight markets, they are not directly related to the performance of a ship, certainly no more so than an interest rate swap on a loan secured by a ship mortgage would be. Moreover, many FFAs are traded and settled over the counter and not on an established exchange. While the characterization of FFAs as "maritime in nature" conceivably could push the FFA market towards exchanges designed to provide an efficient netting mechanism, the logical result would be that counterparty risk would be heightened. A problem we are seeing for many companies is that they are "in the money" on some FFAs while "out of the money" on others. The task of sorting out the amounts owed to all parties is complicated enough but becomes even more difficult when a party in the money on an FFA, especially one designed as a hedge against the physical freight market, suddenly finds the amounts owed to it are attached because either it or its counterparty has had funds frozen by Rule B claims.

Another atypical case stands for the position that insurance claims are maritime in nature when they deal with the vessel. *Jaimie Shipping, Inc. v. Oman Insurance Company* held that a claim over insurance proceeds for two vessels over damages to the vessels constitutes a maritime claim.[9] A requirement to almost all ship mortgages is that the owner purchase and maintain certain insurances on the vessel. These contracts create further potential for Rule B to strike. This case is also noteworthy because the claim was brought by a shipowner against the insurance company. Owners, generally thought of as the defendant under most Rule B claims, may also use the mechanism to collect from their debtors. The precedent in *Jamie Shipping* might be further construed and applied in the future to insurance claims related to piracy, another emerging issue in shipping finance.

2. "Mixed" Contracts Analysis

Mixed contracts, those that contain both maritime and non-maritime elements, may also possibly be subject to the district court's admiralty jurisdiction in the Second Circuit. *Folksamerica Reinsurance Co. v. Clean Water of New York, Inc.* sets forth a two-part inquiry to determine whether admiralty jurisdiction exists in such cases: (1) the court must make an initial inquiry whether the subject matter of the dispute is so separated from the business of maritime commerce that it does not implicate the concerns fundamental to admiralty and maritime jurisdiction and (2) if the first part is satisfied, the court must change its focus and determine whether the contract itself is primarily

[6] *Id.*

[7] *See* International Convention on Arrest of Ships, 1999 Article 1(1)(v) (any dispute arising out of a contract for the sale of a ship is a "maritime claim"). The 1999 convention is not yet in force but arguably reflects the evolving state of international maritime law.

[8] No. 07 Civ. 4546, 2007 U.S. Dist. LEXIS 81137 (S.D.N.Y. Oct. 30, 2007).

[9] No. 08 Civ. 6882, 2008 U.S. Dist. LEXIS 67765 (S.D.N.Y. Sept. 8, 2008).

maritime in nature.[10] If the contract appears to be mixed, it normally will fall outside the jurisdiction of Rule B.

3. Guarantees

It may be possible for the influence of Rule B to affect a company even if it is not the primary debtor under a contract. A guarantee of performance on a maritime contract is considered maritime in nature – while an agreement to act as a surety on a maritime contract is not.[11] Shipowners and financiers need to be attentive to this issue when assessing their relative exposure to Rule B claims as many of the contracts used for financing a vessel are guaranteed by third parties (these third parties are sometimes even further related to the owner, as discussed below).

4. Alter Ego Analysis

If a plaintiff can plead that a debtor is the "alter ego" of another named defendant, the plaintiff may attach the alter ego's assets as well, even in the absence of contractual privity.[12] There are many factors to examine in determining whether a company's assets should be attached under this analysis, many of which are fairly intuitive. While the trend in case law has generally been to make piercing the corporate veil a more burdensome exercise on plaintiffs, the pre-judgment nature of Rule B attachment orders provides judges with little ground on which to challenge the assertions made by plaintiffs. Attachment orders have been granted in respect to alter ego claims that would never withstand scrutiny in a full trial on the merits, yet such trials may not even occur before the judge granting the order, particularly, if the order is granted in aid of a foreign arbitration claim.

This issue is important to shipping finance because many companies create special purpose entities, each designed to own a ship of the "parent" company. In most cases, this arrangement is designed to limit liability of the parent related to each vessel. Through the alter ego analysis in the context of Rule B, a court will likely "pierce the corporate veil" more readily than would occur under normal proceedings, thus creating a nexus of liability between "parent" and "sister" companies of a debtor.

[10] 413 F.3d 307, 312 (2d Cir. 2005).

[11] *See, e.g., Transport Panamax, Ltd. v. Kremikovtzi Trade E.O.O.D.*, 2008 U.S. Dist. LEXIS 48688 (S.D.N.Y. June 19, 2008).

[12] *Wm. Passalacqua Builders, Inc. v. Resnick Developers South, Inc.*, 933 F.2d 131, 139 (2d Cir. 1991).

IV. Expansion of Attachable Property

As challenging as the environment has become given the expansion of maritime claims and the procedural advantage Rule B affords plaintiffs, the expanding universe of attachable property is even more pertinent to ship finance. Plaintiffs have utilized Rule B to attach all kinds of property associated with vessel financing – most often the vessel or money in a defendant's bank account – but also arbitration awards, promissory notes, the bunkers on a vessel, even a club letter of undertaking may be attached. No use of Rule B has been more controversial, however, than the attachment of EFTs passing through intermediary banks en-route to a beneficiary who often has no connection to the underlying dispute.

1. EFTs in General

Any wire transfer made in dollars generally passes through a clearing house system, constituted primarily of a number of intermediary money center banks located in the Southern District of New York. The paramount result of *Winter Storm* has been that courts are able to attach the EFTs passing through an intermediary bank as garnishee. This possibility comes as a surprise to many companies as they need not even have a bank account in New York and the parties may have no connections to the Southern District. For example, a shipowner in Greece, having charters only to companies in Asia, with the payments being conducted through the two parties' respective national banks, could have a dollar-based payment frozen by a Rule B attachment as it passes through a New York intermediary bank.

The attachment of EFTs is of particular importance to the ship finance community. The vast majority of shipping transactions, and certainly most loans, are denominated in United States Dollars with a floating rate interest based on quoted LIBOR (the London Inter-Bank Offered Rate). While shipping lenders have more or less been able to stay above the fray in this Rule B storm, the question is how much longer they will be able to do so. With the shipping markets in disarray and so many shipping loans already treading water, how long will it be before a borrower is unable to make a loan payment because funds are attached in New York pursuant to a Rule B attachment order by a third-party creditor of the borrower? In today's marketplace, this prospect is all too real.

2. "Originator" versus "Beneficiary" EFTs

The aftershock of the *Winter Storm* decision polarized the commercial banking and shipping interests in New York. The Maritime Law Association of the United States filed an *amicus curiae* brief in support of the decision in a separate appeal, urging that state law should not be used to construe Rule B in the interest of

uniformity.[13] Opponents of *Winter Storm*, on the other hand, argue that New York law complements, rather than conflicts with, Rule B by defining what constitutes the originator's property in the context of a funds transfer. These parties also point to the disruptive effect *Winter Storm* may have on the state banking system, which is of vital importance to world commerce.[14] Attachment of EFTs has been heavily criticized by those in the banking industry, which frequently prepare *amicus* briefs in connection with Rule B disputes.[15] The banking industry's concerns include that attachments disrupt the financial markets and that undermine the federal clearing system.

One of the more important cases in which the major banks in New York submitted an *amicus curiae* brief that was argued and decided before the Second Circuit, *Consub Delaware*, asked the Second Circuit to overturn its controversial *Winter Storm* decision.[16] The Second Circuit refused to overturn *Winter Storm* and expressly held that "originator" EFTs - wire transfers from a debtor company to a third party - were subject to attachment.[17] The court refused, however, to decide whether "beneficiary" EFTs were attachable.

A very recent case held that "beneficiary" EFTs are not subject to Rule B because EFTs directed by third parties to the debtor do not become the defendant's property until the transfer is completed."[18] The district court vacated the attachment as a result of its finding that a beneficiary EFT was not the property of the defendant. The aftermath of this case and whether it is followed by the other judges in the courts of the Southern District remains to be seen.

3. Rule B Priority of Claims

Further muddying the waters is the question whether a Rule B attachment trumps a prior perfected security interest, that is, does Rule B trump New York's Uniform Commercial Code? There is some case law that states that maritime liens take precedence over UCC Article 9 ("Article 9"). In these cases, a Rule B attachment could "leapfrog" in priority over a concurrent or prior-made UCC lien.[19] Maritime law, for example, grants special priority to maritime liens in the case of freight. This result may come as a bombshell to those outside the maritime field because customarily many security interests formed in conjunction with financing are generally "perfected" through the filing a of a UCC-1 Financing Statement under Article 9. This "perfection" of the security interest almost always takes priority over any later-in-time creditors.

V. Tension in the Banking and Judicial Sector Created by Rule B

1. Judicial Backlash Against Rule B

In a recent decision, *Cala Rosa Marine Co. v. Sucres et Deneres Group*,[20] the plaintiff sought a Rule B attachment to secure a claim for unpaid freight and demurrage. Judge Sheindlin refused to vacate a challenged order of attachment. The holding is important, however, because the district court refused to include in its order the two provisions that have become mainstays in Rule B: (1) any process served

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[13] Maritime Law Association of the U.S. Brief of Amicus Curiae in Support of Application of Federal Maritime Law, *Vamvaship Mar. Ltd. v. Shivnath Rai Harnarain (India) Ltd.* No. 06-1849 -HB, 2006 U.S. Dist. LEXIS 21114 (2d Cir.) (appeal pending). One can hazard a guess as to why the Maritime Law Association would support such a position.

[14] *See, e.g.*, Br. for Def.-Appellant in *Consub Delaware LLC v. Schahin Engenharia Limitada*, 543 F.3d 104 (2d Cir. 2008).

[15] A footnote in another important case in Rule B lore questions the holding in *Winter Storm* as to whom an EFT belongs. *Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd.* Questions, in particular, *Winter Storm*'s reliance on *United States v. Daccarett* to hold that EFTs are property of the beneficiary or sender of an EFT. Observationally, *Winter Storm* seems to be distinguishable from *Daccarett* because, in the latter case, ownership of the EFT was not an issue because a statute provided that the proceeds were forfeited to the government at the moment of the drug sale. *United States v. Daccarett*, 6 F.3d 37, 55 (2d Cir. 1993). Because *Daccarett* was a forfeiture case, its holding that EFTs are attachable assets does not answer the more salient question of whose assets they are while in transit. In the absence of a federal rule on point, a judge should normally look to state law, which in this instance is the New York codification of the Uniform Commercial Code, N.Y. U.C.C. Law §§ 4-A-502 to 504. Under state law, the EFT could not be attached because EFTs are property of neither the sender nor the beneficiary while passing through the intermediary bank.

[16] *Consub Delaware LLC v. Schahin Engenharia Limitada* , 476 F. Supp. 2d 305 (S.D.N.Y. 2007).

[17] *Consub Delaware LLC v. Schahin Engenharia Limitada* , 543 F.3d 104 (2d Cir. 2008).

[18] *Shipping Corp. of India, Ltd. v. Jaldhi Overseas Pte Ltd.*, No. 08 Civ. 4328, 2008 U.S. Dist. LEXIS 49209 (S.D.N.Y. June 27, 2008).

[19] *Compare K/S A/A Sea Team et Co. v. Colocotronis (Greece) S.A.*, 1978 U.S. Dist. LEXIS 16786 (S.D.N.Y. Jul. 5, 1978) (a "lien creditor under the UCC [is] subordinate to a prior perfected security interest in the attached property") *with Winter Storm* (Second Circuit rejected a garnishee bank's motion to vacate the Rule B attachment brought to enable the bank to exercise a right of set-off created by the New York Debtor and Creditor Law, Sec. 151; the Second Circuit held that the statute conflicted with and was preempted by the plaintiff's Rule B right of attachment).

[20] 2009 U.S. Dist. LEXIS 7934 (S.D.N.Y. Feb. 4, 2009).

on a garnishee bank would be deemed continuously served through the end of the next business day, and (2) employees of the applying law firm would be appointed as special process servers (thus necessitating that a U.S. Marshal serve process). In other words, the court declined to force banks to treat the service as continuous and to accept it from anyone other than a US Marshal.

The court effectively opened the door for banks to create harsh conditions for Rule B creditors. Nevertheless, banks still may allow such process as the disruption created by hand-given delivery, multiple times a day, would be disruptive. In addition, other judges have yet to follow this holding, creating an inconsistent regime. Both recent case law and our experiences here make clear that the judge – randomly assigned out of 44 total judges in the Southern District – may have an effect on the scope of the order issued – or whether the order is even approved.

2. Stress on Banking Industry

The transient nature of EFTs and the manner in which plaintiffs and courts structure the orders of maritime process to account for it impose significant burdens on the banking sector. Several banks have even created entire divisions to help coordinate Rule B matters. For example, it would be nearly impossible for a Plaintiff to time service of process on a bank to capture a wire transfer as wire transfers occur instantaneously. To compensate for this difficulty, courts have crafted orders that, in essence, permit banks to deem the papers to be served repeatedly and continuously for 24 hours from the time they were initially presented. Orders have also allowed for special designation of process servers, normally someone at the plaintiff's law firm. These methods have currently come under fire in cases such as *Cala Rosa* and as discussed previously.

VI. Guarding Against Rule B Attachments

1. Post Security

As noted above, any transaction conducted in U.S. dollars is potentially subject to disruption by a Rule B attachment. To quickly avoid disruption, one strategic option that a company may take is to post security on the claim in exchange for a plaintiff's agreement to stop serving the order of attachment and allow the company to transact business in dollars freely. In times of tight credit, this solution may be unrealistic, particularly if the company's funds are already frozen. There are, however, other potential guards against Rule B.

2. Registering to do Business in New York

A developing issue in Rule B as of late is the increase of defendants qualifying to do business in New York as a means of potentially avoiding Rule B. To determine whether a defendant can be "found" within the district, the court will engage in a two-step inquiry: first, whether the defendant can be "found" within the district for purposes of personal jurisdiction, and second, whether it can be "found" for purposes of service of process.[21] The relevant date of inquiry is the date the complaint was filed, and, thus, this practice has only prophylactic effect.

To meet both of these elements, many companies have elected to register with the New York Secretary of State as a foreign corporation licensed to do business in New York and appoint an agent for service of process in the Southern District of New York. The majority of Southern District judges have previously found this practice sufficient to vacate a Rule B attachment even in the absence of a defendant actually conducting business in the state.[22] The registration acts more as a "brass plate" office of the company.

The Second Circuit has recently spoken directly to this issue in a landmark opinion for potential Rule B defendants, *STX Panocean (UK) Co. v. Glory Wealth Shipping Pte Ltd.*[23] In the opinion, the court made clear that registration to do business in New York, pursuant to New York Business Corporation Law § 1304, and designation of an agent for service of process within the district constitute being "found" within the district for purposes of Rule B.

Companies should, of course, carefully consider the implications of qualifying to do business in New York because, as a practical matter, registering to do business in the state of New York will subject a company to general personal jurisdiction in the state. Many direct actions by potential creditors would be precluded, however, because many of the contracts that would be in dispute contain forum-selection clauses, a substantial number calling for London Arbitration. General jurisdiction may become an issue, however, when dealing with third-party actions,

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[21] *Seawind Compania, S.A. v. Crescent Line, Inc.*, 320 F.2d 580 (2d Cir. 1963).

[22] *See, e.g., Pioneer Navigation, Ltd. v. Stx Pan Ocean Co.*, No. 08 Civ. 10490, 2008 U.S. Dist. LEXIS 103255, (S.D.N.Y. Dec. 18, 2008); *Glory Wealth v. Transfield*, No. 08 Civ. 9248, 2008 U.S. Dist. LEXIS 98839 (S.D.N.Y. Nov. 25, 2008); *Minmetals Shipping & Forwarding Co. Ltd. v. HBC Hamburg Bulk Carriers GMBH & Co. KG*, No. 08 Civ. 3533, 2008 U.S. Dist. LEXIS 48639 (S.D.N.Y. June 24, 2008); *Carolina Shipping Ltd. v. Renaissance Ins. Group Ltd.*, No. 08 Civ. 4711 (S.D.N.Y. June 10, 2008); *Centauri Shipping Ltd. v. Western Bulk Carriers KS*, No. 07 Civ. 4761 (S.D.N.Y. Sept. 7, 2007); *Express Sea Transport Corp. v. Novel Commodities S.A.*, No. 06 Civ. 2404 (S.D.N.Y. May 4, 2006).

[23] 08 Civ 6131 (2d Cir. 2009).

in which the third parties are not bound by the forum selection.

In addition, as the court in *Aqua Stoli* made clear, a defendant may avoid Rule B if it is "subject to suit in a convenient adjacent district."[24] What qualifies as a "convenient, adjacent district" is not, however, entirely clear. Some recent case law has found that offices in New Jersey or Connecticut may suffice.[25]

An analysis as to the tax consequences related to registering to do business in New York may likely lead to the conclusion that there are no material adverse consequences. This conclusion must further be qualified with the statement that all situations are different and should be examined on an individual basis. Nonetheless, irrespective of what conclusion a borrower might independently reach, counsel to a lender must consider whether it should advise its bank client to require its customer to qualify to do business in New York and appoint an agent for service of process in the Southern District.

3. Contract Drafting

It is thought, however limited in its effect, that because the scope and enforcement of a forum-selection clause is a matter of contract, contract stipulation will govern the extent to which a foreign court may exercise its jurisdiction. Thus the parties may negotiate into their contract a stipulation that proceedings to obtain prejudgment security shall be limited to a selected forum to the exclusion of the courts of any other country, including the Southern District of New York. At least one appellate court has suggested that such a stipulation could oust a U.S. court of Rule B jurisdiction.

4. Use of Euros as the Currency of Shipping Finance

The dollar is the currency of shipping finance. Nonetheless, shipping companies could stipulate payments to perform in Euros (or any alternate currency), thereby bypassing the dollars-based clearing house system altogether. A currency regime shift could happen under extreme conditions and was even thought to be a possibility as the dollar retreated in value against other dominant currencies in the mid 2000's. As the economy has grown further and further volatile in the tail end of the decade, however, strength and preference in the dollar is now returning due to its historical stability as a currency.

VII. Conclusion

Until a defendant company responds to a Rule B claim, it may find segments of its business at a virtual standstill because a Rule B attachment will hinder its ability to transact business in U.S. dollars. The company may further find itself defaulting on other contracts as funds are frozen that were earmarked for payments on those contracts. Assuredly, Rule B is a dominant weapon against elusive debtors who might otherwise evade their obligations altogether or at least force creditors to squander considerable time and expense enforcing a judgment or an arbitration award against them. Rule B's pervasiveness in the maritime finance sector has reached a point that cannot be ignored by shipowners or their lending banks. As one well known banker in the industry, Hugh Baker of HSH NordbankAG, recently remarked, "Rule B is a potential game changer."

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[24] 460 F.3d 434 (2d Cir. 2006).

[25] *See, e.g., Swiss Marine Servs. S.A.*, 2008 U.S. Dist. LEXIS 93095, at *6 (citing *Ivan Visin Shipping, Ltd. v. Onego Shipping & Chartering B.V.*, No. 08 Civ. 1239, 2008 U.S. Dist. LEXIS 25028, at *11 n.3 (S.D.N.Y. Apr. 1, 2008) (District of New Jersey found convenient)); *Cantone & Co., Inc. v. SeaFrigo*, 07 Civ. 6602, 2009 U.S. Dist. LEXIS 5620 (S.D.N.Y. Jan. 27, 2009) (vacating an attachment when defendants and non-party entity were both branch offices of the same corporate parent, the latter with offices in New Jersey).