

ARREST AND ATTACHMENT DISTINGUISHED

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Under United States law, a party may commence a maritime action by seizing property through two different procedures: arrest and attachment. The procedural rules governing maritime arrest and attachment are contained in the Supplemental Rules for Certain Admiralty and Maritime Claims (the “Supplemental Rules”), which are sometimes referred to as the “lettered rules.” *See* SUPP. RULES FOR CERTAIN ADM. & MAR. CLAIMS A-F, 28 U.S.C.A. Rule C of the Supplemental Rules generally governs “arrest” proceedings in admiralty. Rule B of the Supplemental Rules applies to “attachment” proceedings. Rule E of the Supplemental Rules provides additional procedural rules for both arrest and attachment actions brought under Rules C and B, respectively.

Importantly, while many maritime actions may be brought either in federal or state court (the latter pursuant to the “Savings to Suitors Clause” of 28 U.S.C. § 1333), maritime arrest and attachment proceedings may be commenced only in federal court. To commence either an arrest or an attachment proceeding, the property sought to be seized must ordinarily be physically located within the court’s territorial jurisdiction. A plaintiff may arrest and/or attach property without having to provide pre-seizure notice to the property’s owner or submit to a pre-seizure hearing.

ARREST

A maritime arrest proceeding, under United States law, is a true *in rem* action brought against certain named property, such as a vessel. The arrest action is predicated on the liability of the property itself (e.g., in tort or contract) and need *not* be based upon any personal liability of the property’s owner. Maritime arrest is not, therefore, simply a means for obtaining *in personam*

jurisdiction over a non-resident vessel owner or for obtaining security in the United States. The property arrested must relate directly to the plaintiff's claim, and, as a result, United States law does not recognize sister-ship arrests. To arrest property, a plaintiff must have a maritime lien or statutory authority. *Trinidad Foundry & Fabricating, Ltd. v. M/V K.A.S. CAMILLA*, 966 F.2d 613, 615 (11th Cir. 1992); *Sembawang Shipyard, Ltd. v. Charger, Inc.*, 955 F.2d 983, 987 (5th Cir. 1992).

ATTACHMENT

In contrast to the arrest procedure, an attachment action is predicated on the liability of the property's owner, not the property itself. Attachment represents an alternative method for obtaining *in personam* jurisdiction over a defendant, through the seizure of its property, and, therefore, is sometimes referred to as *quasi-in-rem* jurisdiction. Because attachment is designed, in part, to obtain jurisdiction over the defendant, attachment is not available if the defendant can be "found within the district," that is, is subject to service of process *and* personal jurisdiction in the district. Attachment also provides security for the plaintiff's claims against the defendant. Thus, *any* of the defendant's property located within the district may be attached even if the property is totally unrelated to the events giving rise to the claim and even if the property has no maritime character. A person with a maritime claim may also utilize state attachment procedures.

Maritime attachment differs further from arrest in another important respect. Property that is arrested or attached may be sold to satisfy a judgment obtained against the defendant. Because an arrest is an *in rem* action, the sale of the property "scrapes" the property free of all liens. On the other hand, in an attachment, the property is sold merely to satisfy a judgment against its owner, and, therefore, the sale does not affect the rights of other persons, such as those holding maritime liens or preferred ship mortgages.

For additional information concerning the features of, and distinctions between, the arrest and attachment procedures under United States law, see:

- Michael H. Bagot, Jr. and Dana A. Henderson, *Seize and Desist: Damages for Wrongful Maritime Seizure*, 25 TUL. MAR. L.J. 117 (2000)
- William Tetley, *Arrest, Attachment, and Related Maritime Law Procedures*, 73 TUL. L. REV. 1895 (1999)
- Keith B. Letourneau, *A Practical Guide to Admiralty Supplemental Rules A Through E (with a Special Emphasis on the Southern District of Texas)*, 22 TUL. MAR. L.J. 417 (1998)