



MARITIME ATTACHMENT and VESSEL ARREST in the US

The variety of players and locales in the international shipping industry can make dispute resolution in this area a complicated prospect. US maritime law recognizes this difficulty and offers claimants a robust set of procedures to satisfy maritime claims and liens against shipowners through attachment and seizure of vessels and other property.



BRUCE G. PAULSEN

PARTNER
SEWARD & KISSEL LLP

Bruce specializes in handling complex commercial and maritime litigation and arbitration through trial, appeal, and ultimate settlement. He has handled domestic and international commercial litigation and arbitration involving fraud, international trade, securities, insurance, bankruptcy, regulatory disputes, and others. Bruce has substantial expertise in the area of international trade sanctions and has been deeply involved in handling piracy issues before US government agencies.



JEFFREY M. DINE

ASSOCIATE
SEWARD & KISSEL LLP

Jeff focuses his practice on representing shipping companies, investment banks, hedge funds, indenture trustees, and administrative agents in complex corporate and commercial litigation and arbitration. He has experience with securities and derivative litigation, maritime commercial matters, securitizations, contracts, and bankruptcy. In addition to state and federal courts, Jeff practices in international, maritime, domestic, and securities industry arbitrations and mediations.

Shipping remains the most cost-effective and important means of world trade, with nearly 90% of all goods transported by sea. Key players in the shipping industry include shipowners and their crews, vessel charterers, suppliers, banks and other lenders, collateral agents, and others, all of whom have distinct roles and use various methods to secure payment for obligations arising from the shipment of goods and passengers on navigable waters. Given the numerous entities and individuals operating within the shipping industry, disputes are bound to arise and with them, complicated questions of location, jurisdiction, and property rights (see *Box, A Case in Point: O.W. Bunker*).

To address the transitory nature of ships and their cargo, and the international domiciles of most shipowners, US admiralty law provides maritime creditors and claimants with a unique set of remedies. In particular, the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (Supplemental Rules) of the Federal Rules of Civil Procedure (FRCP) provide for:

- Pre-judgment attachment of property owned by parties that are subject to maritime claims (Supplemental Rule B).
- Arrest (or seizure) of vessels and other property based on maritime liens or statutory rights (Supplemental Rule C).

Both maritime attachment and arrest provide a claimant, who might otherwise be left without a remedy, with the important ability to obtain pre-judgment security and, practically speaking, force the defendant to respond to a lawsuit.

This article explains the rules and procedures for attachment and arrest in maritime actions, including:

- Jurisdictional issues related to attachment and arrest.
- The plaintiff's application for an attachment order or arrest warrant.
- Service of process for attachment or arrest.
- The defendant's or garnishee's answers to the complaint and any interrogatories.
- Requirements for the plaintiff and defendant to post security in connection with an attachment or arrest proceeding.
- Challenges to an attachment order or arrest warrant.

UNDERSTANDING ADMIRALTY JURISDICTION

Federal courts are vested with original jurisdiction over any "civil case of admiralty or maritime jurisdiction" (28 U.S.C. § 1333 (granting concurrent jurisdiction to state courts through the "saving to suitors" clause where a plaintiff is entitled to additional state-based remedies)). The Supplemental Rules provide specific procedures for a federal district court to exercise jurisdiction over maritime actions:

- ***In personam* (against a person).** It is common in maritime cases for a plaintiff to have an *in personam* claim against a defendant, although the defendant is not present in the judicial district. A court may obtain jurisdiction over the defendant by satisfying the national long-arm statute (FRCP 4(k)(2); see also *Fraser v. Smith*, 594 F.3d 842, 848-49 (11th Cir. 2010)).

- ***In rem* (against a thing).** In some maritime cases, a plaintiff may seek to enforce a lien or certain statutory rights against property. A federal district court has exclusive jurisdiction over *in rem* suits against vessels or other property located within the judicial district, which is obtained through maritime arrest (see *Am. Dredging Co. v. Miller*, 510 U.S. 443, 446-47 (1994)). However, the court's *in rem* jurisdiction applies only to the vessel or other property subject to the lien. There is no associated or sister ship arrest regime in the US (see below *Property Subject to Arrest*).
- ***Quasi in rem* (as if against a thing).** Inherent in a district court's admiralty jurisdiction is its power to attach the defendant's property or, where the property is possessed by a third party such as a bank or financial institution, to garnish it (see *Vitol, S.A. v. Primerose Shipping Co.*, 708 F.3d 527, 536-38 (4th Cir. 2013)). This *quasi in rem* jurisdiction is a form of personal jurisdiction over the defendant. Given that there is no associated or sister ship arrest regime in the US, in some circumstances, a plaintiff instead may seek to attach the property of a defendant, including other vessels owned by the same defendant (see below *Attachable Property*).

Additionally, under the Federal Arbitration Act (FAA), a party to an arbitration agreement may commence a maritime-related proceeding by filing a complaint and seizing the vessel or other property in accordance with the Supplemental Rules. The federal district court has jurisdiction to direct the parties to proceed with the arbitration and retains jurisdiction to enter its decree once the award is issued. (9 U.S.C. § 8.)



Search [Interim, Provisional, and Conservatory Measures in US Arbitration](#) for more on the interim measures available in arbitration and how to apply for these remedies.

SEEKING ATTACHMENT OR ARREST

A plaintiff's complaint seeking either attachment or arrest in a maritime action must be sufficiently detailed to enable the defendant to investigate the facts and develop its response without seeking a more definite statement (Supplemental Rule E(2)(a)). Although its parameters are not specified, this pleading requirement should be more comprehensive than the "short and plain" statement contemplated by FRCP 8.

ATTACHMENT ORDERS

A plaintiff may invoke Supplemental Rule B to attach the defendant's property as security for a maritime claim or to garnish property that is in the possession of a third party within the district, such as debts owed to the defendant. Additionally, the plaintiff may seek pre-judgment relief under state law through FRCP 64 (Supplemental Rule B(1)(e)). After seeking an attachment order, the plaintiff can then pursue its substantive claim in district court or in arbitration for damages up to the value of the property attached.



Search [Commencing a Federal Lawsuit: Filing and Serving the Complaint](#) for more on commencing an action in federal district court.

To obtain an attachment order under Supplemental Rule B, the plaintiff must:

- Identify the property to be attached.
- Demonstrate a prima facie maritime claim.
- Verify that the defendant cannot be found in the district.

The plaintiff must file a verified complaint along with a due diligence affidavit by the plaintiff or its counsel attesting that, to the knowledge or information and belief of the affiant, the defendant cannot be found in the district.

The court must review the complaint and affidavit. If it appears that the conditions of Supplemental Rule B are satisfied, the court enters an order authorizing process of attachment and garnishment. The clerk may issue supplemental process enforcing the court's order without further court order. (Supplemental Rule B(1)(b).) The attachment order is customarily issued ex parte.

If the plaintiff or its counsel certifies that there are exigent circumstances requiring immediate attachment without judicial approval, the clerk must issue the summons and attachment order. However, the plaintiff has the burden to show at a later hearing that exigent circumstances existed. (Supplemental Rule B(1)(c).)

Both maritime attachment and arrest provide a claimant, who might otherwise be left without a remedy, with the important ability to obtain pre-judgment security and, practically speaking, force the defendant to respond to a lawsuit.

Attachable Property

Assuming that the defendant is not present in the district (see below *Defendant Not Found in the District*), a plaintiff may seek attachment of any of the defendant's property in the district, whether or not that property is related to the plaintiff's underlying claim. Attachable property may include:

- Vessels.
- Tangible property.
- Bank accounts.

- Debts owed by others.
- Property of related entities, based on an alter ego theory of liability.

Because an attachment order may be served only in the district, only property (including intangible property) residing in the district may be attached (Supplemental Rule E(3)(a); *Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd.*, 460 F.3d 434, 438 (2d Cir. 2006), overruled on other grounds by *Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd.*, 585 F.3d 58 (2d Cir. 2009)). Notably, electronic funds transfers passing through intermediary transferee banks in the district are presently not subject to attachment under Supplemental Rule B (*Shipping Corp. of India Ltd.*, 585 F.3d at 61, 71).

Further, an attachment order does not capture property that is acquired by, or available to, the defendant only after service of the order (*Reibor In'l Ltd. v. Cargo Carriers (KACZ-CO.) Ltd.*, 759 F.2d 262, 265-68 (2d Cir. 1985); *British Marine PLC v. Aavanti Shipping & Chartering Ltd.*, 2013 WL 6092821, at *2 (E.D.N.Y. Nov. 19, 2013); *Oceanfocus Shipping Ltd. v. Naviera Humboldt, S.A.*, 962 F. Supp. 1481, 1484-85 (S.D. Fla. 1996)). Because of this limitation, a plaintiff seeking attachment may wish to serve process on garnishees on a regular basis to ensure that the attachment order captures after-acquired property (see below *Serving Process for Attachment or Arrest*).

Prima Facie Claim

To establish a prima facie maritime claim, the plaintiff must show, with particularity, a basis for seeking security on the claim. To determine if the plaintiff has met this standard, a court must assess whether the plaintiff has pled:

- **A valid maritime claim.** Whether or not a claim is maritime in nature is a procedural inquiry determined under US federal maritime law. Typically, claims that meet this standard include those that involve maritime contracts or require the court to exercise jurisdiction over maritime property. Additionally, claims involving personal injuries, cargo damage, collisions, and maritime products liability fall under admiralty jurisdiction.
- **A valid prima facie claim.** The prima facie validity of a claim is determined under the substantive law that applies to the claim. For example, in a case alleging alter ego liability, a federal district court must apply maritime choice of law principles to determine the relevant substantive law. In many cases, the validity of an alter ego claim is governed by federal common law. (See, for example, *Blue Whale Corp. v. Grand China Shipping Dev. Co.*, 722 F.3d 488, 494-95, 500 (2d Cir. 2013).)

Defendant Not Found in the District

While there is not complete uniformity among the circuits, courts have generally held that to be "found" in the district, the defendant must both:

- Have affiliations that are so "continuous and systematic" as to render the defendant essentially "at home" in the forum state.
- Be subject to specific personal jurisdiction arising out of the transaction at issue.

(See, for example, *Daimler AG v. Bauman*, 134 S. Ct. 746, 761-62 (2014); *STX PanOcean (UK) Co. v. Glory Wealth Shipping Pte Ltd.*,

A Case in Point: O.W. Bunker

O.W. Bunker & Trading A/S was a Denmark-based company that operated as one of the largest marine fuel suppliers, with worldwide operations through various subsidiaries. It collapsed suddenly and filed for bankruptcy in a welter of alleged fraud and risk management failures in 2014, not long after its initial public offering. O.W. Bunker's business worked through purchase and sale contracts between its subsidiaries and often with third-party physical suppliers, who provided the fuel loaded onto vessels. There are now insolvency proceedings in multiple jurisdictions, including the US.

At the time of O.W. Bunker's collapse, there were many instances (likely thousands) worldwide where a vessel had been supplied fuel, but the O.W. Bunker invoice had not been paid by the shipowner and the physical supplier remained unpaid by O.W. Bunker. This has led to numerous attachment, arrest, and interpleader actions among

shipowners, ING Bank as agent for the secured lenders to the O.W. Bunker entities, O.W. Bunker's subsidiaries, and physical suppliers worldwide over competing maritime liens or *in personam* contract claims. In these cases, both the physical supplier and ING Bank or the O.W. Bunker entity have claimed a maritime lien against the shipowner for necessities under 46 U.S.C. §§ 31301-31343.

Additionally, there are at least hundreds of maritime arbitrations in London over contract issues involving O.W. Bunker. In May 2016, the UK Supreme Court issued an important decision, *The Res Cogitans*, which may have significant implications for sale of goods cases under UK law where the goods are consumed before payment.

The O.W. Bunker collapse also will likely lead to changes in suppliers' and others' contracts for fuel supply to reduce counterparty risk.

560 F.3d 127, 130-31 (2d Cir. 2009); *Smith Mar., Inc. v. Lay Drilling Barge Akpevweoghene (Ex Cherokee)*, 2013 WL 140215, at *2 (W.D. La. Jan. 10, 2013).

Therefore, to show that a defendant is not found in the district, the plaintiff must demonstrate that the defendant is not:

- Subject to the court's general or specific jurisdiction in the matter, including by being registered as a foreign company with the Department of State of the state in which the district is located (see *STX PanOcean*, 560 F.3d at 130-31).
- Amenable to service of process in the district (see *Smith Mar.*, 2013 WL 140215, at *2-3; *Stolt Tankers B.V. v. Geonet Ethanol, LLC*, 591 F. Supp. 2d 612, 618 (S.D.N.Y. 2008)).

ARREST WARRANTS

Maritime lien and mortgage creditors may seek an arrest warrant under Supplemental Rule C to enforce their rights against vessels or other property.

To obtain an arrest warrant under Supplemental Rule C, a plaintiff must bring a verified complaint that:

- Describes the property sought to be arrested.
- Alleges a valid maritime lien or statutory interest in the property.
- States that the property is located within the district.

Unlike maritime attachment, the remedy of arrest may be granted even if the defendant can be found in the district.

The court must review the complaint and supporting papers. If it appears that the conditions of Supplemental Rule C are satisfied, the court enters an order directing the clerk to issue a warrant for the arrest of the vessel or other property that is the subject of the action. (Supplemental Rule C(3)(a)(i).)

If the plaintiff or its counsel certifies that there are exigent circumstances requiring immediate arrest without judicial approval, the clerk must issue the summons and arrest warrant. However, the plaintiff has the burden to show at a later hearing that exigent circumstances existed. (Supplemental Rule C(3)(a)(ii).)

Property Subject to Arrest

Any property subject to a maritime lien is subject to arrest, including, most commonly:

- Vessels and related equipment.
- Freights.
- Bunkers.

However, certain property is exempt from arrest, including:

- Sister ships or other vessels associated with the defendant. Supplemental Rule C supports *in rem* jurisdiction over only the property subject to the lien, and sister ship arrest is a presumptive veil piercing of companies that own vessels that are all part of the same fleet. By contrast, any of the defendant's property, including other vessels owned by the defendant, may be attached in certain circumstances, because *quasi in rem* jurisdiction under Supplemental Rule B is a form of personal jurisdiction over the defendant (see above *Attachable Property*).
- Vessels or other property owned or operated by or for the US or a federally owned corporation (46 U.S.C. § 30908).
- Vessels or other property of foreign states, except under the limited circumstances provided by the Foreign Sovereign Immunities Act (28 U.S.C. § 1605; for more information, search [A Primer on Foreign Sovereign Immunity](#) on Practical Law).

Valid Maritime Lien

Maritime liens can arise in several circumstances and are defined in the Federal Maritime Lien Act and the Ship Mortgage Act (46 U.S.C. §§ 31301-31343). Maritime liens that may form the basis for an arrest warrant include those arising from:

- *Custodia legis* expenses, which may include fees of the US Marshals Service (USMS), substitute custodian fees, insurance fees, and other costs to preserve the ship while under arrest.
- Unpaid seamen's wages.
- Damages from:
 - tort actions, such as collision or personal injury claims;
 - salvage claims, where an imperiled ship or its cargo are rescued at sea;
 - general average claims, where shipowners whose cargo is exposed to a common danger apportion the damages among them according to the value of their cargo; or
 - mortgage claims brought under the Ship Mortgage Act (46 U.S.C. §§ 31301-31330).

Additionally, necessities suppliers, who provide goods and services to a vessel in response to orders from the ship's owner or authorized agent, have maritime liens on the vessel that may be enforced by an *in rem* civil action (46 U.S.C. § 31342(a)(1), (2)). The term "necessaries" is statutorily defined to include:

- Repairs.
 - Supplies.
 - Towage.
 - Use of a dry dock or marine railway.
 - Bunkers.
 - Food.
 - Spare parts.
- (46 U.S.C. § 31301(4).)

Necessaries suppliers must rely on the vessel's credit, but are not required to allege or prove that they gave credit to the vessel (46 U.S.C. § 31342(a)(3)). For example, a necessities supplier is entitled to a maritime lien unless it has actual notice of a "no lien" clause in the vessel's charter.

Recent case law, including some decisions arising out of the collapse of the bunker supplier O.W. Bunker (see *Box, A Case in Point: O.W. Bunker*), has emphasized that for a lien to arise, the shipowner or its agent must directly authorize the order to supply necessities. By contrast, a subcontractor cannot have a lien if the owner had no role in the selection or performance of the necessities supplier, and instead relied on a chain of subcontracts for the purchase and sale of the necessities. (See, for example, *Lake Charles Stevedores, Inc. v. Professor Vladimir Popov MV*, 199 F.3d 220, 229 (5th Cir. 1999); *ING Bank N.V. v. M/V Temara*, 2016 WL 4471901, at *7-8 (S.D.N.Y. Aug. 24, 2016).)

Property Located Within the District

In its verified complaint, the plaintiff must confirm that the property is in the district or will be there while the action is pending (Supplemental Rule C(2)(c)).

SERVING PROCESS FOR ATTACHMENT OR ARREST

Process may be served only within the judicial district (Supplemental Rule E(3)(a)). The plaintiff may request that service be held in abeyance, which can be used to give the parties time to negotiate a settlement or security without the disruption of attachment or arrest, or if the property is not yet in the district (Supplemental Rule E(3)(b)). Where the subject property is possessed by a third-party garnishee, such as a bank or financial institution, a plaintiff may (and usually does) serve the garnishee with interrogatories along with the complaint.

Who may serve process depends on whether or not the property involves a vessel. Further, who takes custody of the attached or arrested property after service depends on the nature of the property itself.

VESSELS

If the property to be attached or arrested is a vessel or tangible property on board a vessel, the summons, process, and any supplemental process, or the arrest warrant and any supplemental process, must be delivered to the USMS for service (Supplemental Rules B(1)(d)(i), C(3)(b)(i)).

The USMS must follow specific requirements and procedures for attachment or arrest (28 U.S.C. § 1921). Accordingly, a plaintiff seeking to have the USMS attach or arrest property should:

- Contact the USMS office in the district before filing the complaint.
- Strictly comply with the USMS's requirements and procedures.
- Provide the USMS with sufficient upfront funds to cover costs associated with seizing the vessel. These costs, which can include wharfage, security, and insurance fees, vary depending on the size and nature of the vessel and other circumstances.
- Make arrangements for a marshal to be available to seize the vessel.

Courts frequently appoint substitute custodians, which may be less costly than the USMS, to take control of the property shortly after it is attached or arrested.

NON-VESSEL PROPERTY

Service regarding attachment or arrest of other tangible or intangible property may be served by:

- The USMS.
- Someone under contract with the US.
- Someone specially appointed by the court (for example, the plaintiff's counsel or a process server).
- A government officer or employee, in actions brought by the US. (Supplemental Rules B(1)(d)(ii), C(3)(b)(ii).)

Plaintiffs commonly submit an order seeking permission to have designated persons other than the USMS serve process. In attachment cases, it is simpler and less expensive to have, for example, law firm paralegals serve process instead of the USMS.

CUSTODY OF ATTACHED OR ARRESTED PROPERTY

The USMS or other person or organization having process must execute it. The USMS generally takes tangible attached

or arrested property into custody. The USMS may request that US Customs authorities do not give customs clearance to a seized vessel. (Supplemental Rule E(4)(b).)

For debts or other intangible property that cannot be taken into custody, the person executing process affixes a copy of the process to the property and leaves a copy of the complaint and process with the garnishee or other obligor. Alternatively, the USMS may accept payment into the registry of the court of the amount owed up to the amount claimed by the plaintiff, plus interest and costs. The garnishee's payment of the amount owed discharges its obligation to answer the complaint unless alias process (that is, process issued after an earlier process has failed for some reason to accomplish its purpose) is served. (Supplemental Rule E(4)(c).)

On a party's motion or the court's own initiative, the court may enter any order necessary to preserve any attached or arrested property that remains in the possession of its owner or another person. Additionally, the clerk must issue a summons directing any person controlling the property to show cause why the property should not be deposited into the court until judgment is rendered where the plaintiff seeks arrest of either:

- Freight.
- The proceeds of property sold.
- Other intangible property.

(Supplemental Rule C(3)(c).)

RESPONDING TO AN ATTACHMENT ORDER OR ARREST WARRANT

A defendant must answer a complaint brought under Supplemental Rule B within 30 days of execution of process, whether by attachment of property or service on a garnishee (Supplemental Rule B(3)(b)). By contrast, a garnishee in this type of case must answer the complaint and any interrogatories served on it within 21 days of service. If the garnishee does not respond, the court may issue compulsory process to compel the garnishee to answer the interrogatories. If, in its responses, the garnishee admits holding any of the defendant's property, the garnishee must continue to hold the property or pay the funds into the court registry, subject to further order of the court. (Supplemental Rule B(3)(a).)

In a case brought under Supplemental Rule C, any person asserting a right of possession or any ownership interest in the property must file:

- A verified statement of right or interest within 14 days of execution of process or at another time set by the court (Supplemental Rule C(6)(a)(i)).
- An answer within 21 days after filing the statement of right or interest (Supplemental Rule C(6)(a)(iv)).

If the property has been arrested and not released on posting of security within 14 days after execution of process, the plaintiff must give public notice of the action and arrest in a newspaper designated by the court, identifying the time to file a statement of right or interest (Supplemental Rule C(4)).

POSTING SECURITY IN ATTACHMENT OR ARREST PROCEEDINGS

A plaintiff is not required to post security at the outset of a maritime attachment or arrest proceeding. However, after a plaintiff files a complaint, or at any later time, the court may require any party to post security in a sufficient amount to pay all costs and expenses that may be awarded against the party (Supplemental Rule E(2)(b)). The court has broad discretion to order a party to post security for costs, which may include, for example, the premium for bonds obtained to release an attachment (see *Result Shipping Co. v. Ferruzzi Trading USA, Inc.*, 56 F.3d 394, 401 (2d Cir. 1995)). Projected attorneys' fees typically may not be included, absent a statutory or contractual provision to the contrary (see *Med-Asia Shipping Ltd. v. Cosco Beijing Int'l Freight Co.*, 2008 WL 925331, at *2 (S.D.N.Y. Apr. 2, 2008)).

Additionally, the Supplemental Rules provide procedures for:

- Countersecurity posted by the plaintiff.
- Release of property following a defendant's posting of security.
- The sale of the attached or arrested property.

Following the attachment or arrest of a distressed defendant's vessel or other property, numerous claimants may appear, making the defendant's ability to post adequate security both problematic and unlikely.

COUNTERSECURITY POSTED BY THE PLAINTIFF

If a defendant asserts a counterclaim, the plaintiff must post countersecurity in a sufficient amount to cover alleged damages from the counterclaim where:

- The counterclaim arises out of the same transaction.
- The defendant has given security, such as an attachment or arrest.

(Supplemental Rule E(7).)

A court typically orders countersecurity where it furthers the purpose behind Supplemental Rule E(7) of placing the parties on equal terms with regard to security (see *Result Shipping Co.*,

56 F.3d at 399-400; *Front Carriers Ltd. v. Transfield ER Cape Ltd.*, 2007 WL 4115992, at *3 (S.D.N.Y. Nov. 19, 2007)). However, countersecurity should not be ordered where the counterclaims “are blatantly without merit” (*Voyager Shipholding Corp. v. Hanjin Shipping Co.*, 539 F. Supp. 2d 688, 691 (S.D.N.Y. 2008)). A plaintiff also is excused from posting countersecurity where the court exercises its discretion and directs otherwise, on a showing of good cause (see, for example, *Result Shipping Co.*, 56 F.3d at 399).

SECURITY POSTED BY THE DEFENDANT TO RELEASE PROPERTY

A defendant may post security to release attached or arrested property (Supplemental Rule E(5)). The parties commonly agree on the amount and the form of the security, often selecting a letter of undertaking from a protection and indemnity club (maritime liability insurer).

Absent this agreement, attached and arrested property may be released only if the defendant posts a special bond that is tied to the specific charge giving rise to the attachment or arrest. Because the amount of security cannot exceed the value of the property, the bond amount is set at the lesser of either:

- The appraised value of the property.
- The amount of the plaintiff’s claim plus interest and costs (in total, not to exceed twice the amount of the claim).

(Supplemental Rule E(5)(a).) Property in the possession of the USMS or another authorized person will be not released until their costs and charges are paid. A shipowner may file a general bond against claims to avoid future attachment or arrest of a vessel (Supplemental Rule E(5)(b)).

Following the attachment or arrest of a distressed defendant’s vessel or other property, numerous claimants may appear, making the defendant’s ability to post adequate security both problematic and unlikely (see *Box, A Case in Point: O.W. Bunker*).

JUDICIAL SALE

A party, the USMS, or another custodian of attached or arrested property may apply to the court to sell the property, if it is:

- Perishable or subject to deterioration, decay, or injury while in custody.
- Unduly expensive to maintain.
- Unreasonably delayed in being released.

(Supplemental Rule E(9)(a)(i).) The proceeds of the sale must be paid into the court registry, up to the amount needed to satisfy a potential judgment on the plaintiff’s claim (Supplemental Rule E(9)(b)).

Alternatively, on motion by a defendant or person filing a statement of interest, the court may order the property to be delivered to that party, subject to the party’s posting of security (Supplemental Rule E(9)(a)(ii)).

The process for selling attached or arrested property is governed by federal law on judicial sales (28 U.S.C. §§ 2001, 2004). Where a vessel is sold by court order, it is sold free and clear of prior claims, which attach to the proceeds of the sale, with some considerations for the priority of certain liens (46 U.S.C. § 31326(a)).

CHALLENGING AN ATTACHMENT ORDER OR ARREST WARRANT

To address due process concerns, any person claiming an interest in attached or arrested property is entitled to a prompt hearing. A defendant may expressly restrict its appearance at the hearing (or in its answer) to defending against the claim underlying the attachment or arrest. (Supplemental Rule E(8).) The plaintiff bears the burden at this hearing to show why the attachment or arrest should not be vacated (Supplemental Rule E(4)(f)).

Some courts have vacated attachment orders on equitable grounds, where either:

- The defendant is subject to suit in a convenient adjacent district.
- The plaintiff can obtain personal jurisdiction over the defendant in a different district where the plaintiff is located.
- The plaintiff has already secured, through other attachment or arrest, sufficient security for any potential judgment.

(See, for example, *Aqua Stoli*, 460 F.3d at 444-45; but see *Stolt Tankers*, 591 F. Supp. 2d at 616, 619 (declining to vacate an attachment order on equitable grounds where there was no abuse of process).)

In addition to vacating an attachment order or arrest warrant, a court may award damages for a wrongful arrest if the defendant demonstrates that the arrest was made in bad faith, with malice, or with gross negligence (*Comar Marine, Corp. v. Raider Marine Logistics, L.L.C.*, 792 F.3d 564, 574-75 (5th Cir. 2015); *Indus. Mar. Carriers, LLC v. Dantzer, Inc.*, 611 F. App’x 600, 603 (11th Cir. 2015)). Damages for wrongful arrest include:

- Attorneys’ fees.
- Costs.
- Damages directly attributable to the arrest, including lost profits. (*The Conqueror*, 166 U.S. 110, 125 (1897); *Comar Marine*, 792 F.3d at 576-77; *Pace Shipping Servs. Network SA v. M/V Ocean D*, 2003 WL 1733538, at *7 (E.D. La. Mar. 31, 2003).)

Notably, while the district court must have control over the subject property to initiate an *in rem* or a *quasi in rem* proceeding, it need not “continuously possess the *res* to maintain jurisdiction once established.” In other words, where a court vacates an order of attachment or arrest, it can retain jurisdiction over the underlying claim. (*Vitol, S.A.*, 708 F.3d at 540-41.)