§1110 of the Bankruptcy Code Vessels - MLA Bankruptcy Committee Proposed Actions

YLC Liaison: Nick Dugdale, Associate, Sheppard Mullin Richter & Hampton LLP

Issue

* Section 1110 of the Bankruptcy Code, as drafted, was intended to apply to vessels and water carriers, as well as aircraft. Over time, due to various legislative changes, Section 1110 in practice is no longer applicable to vessels, because the Department of Transportation, as successor to the Interstate Commerce Commission, no longer issues “certificate[s] of public convenience and necessity or permit[s]” to water carriers. Thus, no vessels would currently qualify under §1110.

Current Language

* §1110 applies to vessels that are:
	+ documented under chapter 121 of title 46, and
	+ subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a water carrier that, at the time such transaction is entered into, “holds a certificate of public convenience and necessity or permit issued by the Department of Transportation.” (11 U.S.C. § 1110(a)(3) (B))

Proposal for the Committee

* Draft a letter setting out the reasons why §1110 should be amended to apply to financiers and lessors of certain US documented vessels.
* Pass a resolution urging the leadership of the MLA to petition Congress to amend Section 1110 of the Bankruptcy Code to remove highlighted obsolete reference to certificate of public convenience and necessity or permit issued by the Department of Transportation in 11 U.S.C. § 1110(a)(3)(B)), and replace it with language that would extend the rights and remedies available under 1110 to certain vessel financiers and lessors, the scope of which is discussed further below.

Further Points of Discussion for the Committee

* What type of vessels/water carriers should be subject to a revised Section 1110?
	+ Documentation requirement under Ch 121 of title 46 should remain. But, should financiers/lessors of all documented vessels be given the protections afforded under Section 1110? Or should this be restricted to certain types or water carriers?
	+ Should the types of water carrier covered by § 1110 be very limited (as they were under the Interstate Commerce Act?), or should this be more expansive? [[1]](#footnote-1)
	+ Include all water carriers, or only those operating in the domestic noncontiguous trade that are already subject to regulation by the Department of Transportation’s Surface Transportation Board with respect to tariffs?[[2]](#footnote-2)
	+ What about other types of vessels in Jones Act trades, e.g. offshore wind vessels, oil & gas, inland marine?
1. Intent under the ICA was to regulate only those water carriers that substantially compete with railroads and motor carriers, so exceptions for all clearly non-competitive carriers including: transportation by contract or common carriers of liquid cargoes in bulk in tank vessels, transportation by common or contract carrier of not more than three unwrapped bulk commodities, and transportation by contract carriers on the Great Lakes of the same number of bulk commodities. [↑](#footnote-ref-1)
2. Pursuant to 49 U.S.C. § 13521, the Surface Transportation Board has jurisdiction over water carriers operating between U.S. states and in the U.S. non-contiguous domestic trade, meaning transportation from the contiguous 48 states to Alaska, Hawaii, Puerto Rico, Guam and other U.S. territories. Under 49 U.S.C. §§ 13701 and 13702, water carriers operating in the domestic noncontiguous trade are required to maintain and file public tariffs containing their rates, charges, rules and service terms. [↑](#footnote-ref-2)