CONSENTING TO JURISDICTION: HOW TO BLUR THE LINE BETWEEN ADMIRALTY AND BANKRUPTCY LAW

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I. INTRODUCTION

It is an axiom of law in the United States that parties cannot confer a court of limited jurisdiction powers that it has not been expressly granted by the Constitution or statute.[1] This simple proposition often leads to contentious litigation about whether a court is even able to accept a certain case before ever adjudicating the merits presented by the parties. This rule, often used as a convenient way to have a case dismissed from a specific tribunal, obtain a favorable delay, or deliver an ultimate result for a client, is far more important than the mere personal interests of particular parties. One of the hallmarks of Anglo-American law is ensuring that the parties resolve issues within the proper adjudicatory tribunal possessing proper subject matter jurisdiction.[2] Jurisdictional requirements further ensure that the government does not overreach or decide matters that it is incapable of deciding either by the people's will through a Congressional statue or by constitutional mandate.[3] Federal courts have three distinct methods of obtaining subject matter jurisdiction over a case—federal question,[4] diversity,[5] or admiralty.[6] Yet, in the case of *In re Millenium Seacarriers, Inc.* ("*Millenium*"), the United States Second Circuit held that a bankruptcy court could exercise authority that falls exclusively within the realm of federal admiralty jurisdiction— authority that is clearly not conferred upon bankruptcy courts under the Bankruptcy Code— solely by virtue of the parties' consent through their participation in the case, pursuant to the bankruptcy court's equitable powers.[7]

The issue of whether a bankruptcy court can discharge a maritime lien from a vessel in a bankruptcy case goes directly to the heart of several important matters of bankruptcy, admiralty, and even constitutional law. Historically, bankruptcy and maritime law are distinct bodies of law that are not often associated with one another.[8] In the United States, both bodies of law must be understood and must comply with the constitutional framework governing the separation of jurisdictional authority.[9] These two legal systems, and their respective courts, must coexist within the judicial system to effectively address the various legal issues that often involve both frameworks.[10] Given the extraordinary care the Founding Fathers took in crafting our system of governance, it is perplexing to suggest that the consent of individuals could serve as a basis for disregarding a constitutional mandate concerning the separation of powers.[11] Even more perplexing is whether the Constitution's framers would have approved the idea that an individual's consent could justify ignoring the separateness of admiralty jurisdiction. Maritime law's integrity and continuation were essential to achieving and maintaining the Founding Father's aspirations

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[1] *Town of Elgin v. Marshall*, 106 U.S. 578, 580 (1883); *Healy v. Ratta*, 292 U.S. 263, 270 (1934); *Matthews v. Rodgers*, 284 U.S. 521, 525 (1932).
[2] *See* Hornbuckle v. Toombs, 85 U.S. 648 (1873); *see* Livingston v. Story, 34 U.S. 632, 639 (1835).
[3] Bond v. U.S., 564 U.S. 211, 222 (2011) (referring to how federalism protects citizen's liberty and rights from government overreach which is achieved through separate and distinct jurisdictions between the two systems).
[4] 28 U.S.C. § 1331 (1980).
[5] 28 U.S.C. § 1332 (2011).
[6] 28 U.S.C. §1333 (1949).
[7] *See In re* Millenium Seacarriers, Inc., 419 F.3d 83, 85–86 (2d Cir. 2005).
[8] *See* U.S. CONST. art. III, § 1–2.
[9] *See id.*
[10] *See* U.S. CONST. art. I–III.
[11] *See id.*

for a flourishing nation.[12] Strangely, the rule of the *Millenium* case seems to be the law of the Second Circuit, despite its obvious contrast with the founder's reasoning and desires.[13]

The separate jurisdictional authorities of Article I and Article III courts preclude bankruptcy courts from exercising certain powers.[14] Despite precedent from the Second Circuit and the Supreme Court's decision in *Wellness Int'l Network, Ltd. v. Sharif*,[15] the notion of remedying apparent constitutional deficiencies by the parties' consent is an untenable solution to the jurisdictional conflicts between admiralty and bankruptcy, particularly in light of the constitutional and statutory frameworks, the elevated importance of maritime law, and the complex statutory structures governing both legal domains.

This Comment aims to reinforce the distinct and exclusive nature of the process by which maritime liens are discharged from vessels and argues that it is both inappropriate and unconstitutional for bankruptcy courts to adjudicate such claims within the context of bankruptcy proceedings. Specifically, this Comment provides a brief but detailed background of both the bankruptcy and maritime issues essential to understanding the Second Circuit's decision in *Millenium*. Next, this Comment will analyze the *Millenium* case for further clarity on the factual background and the ways the Second Circuit arrived at its conclusion. The Comment then examines how the Supreme Court has addressed the *Millenium* ruling in subsequent decisions. Following this, this Comment will explore additional statutory grounds on which *Millenium* failed to properly address the discharge of maritime liens. Finally, the Comment concludes with a broad analysis of how these issues intersect and build upon one another, while proposing solutions to the inconsistencies in the current law.

II. BACKGROUND

A. Constitutional Clash: Article I Jurisdiction, Legislative Courts, & Judges

The adjudication of disputes is not solely within the purview of Article III judicial courts. Congress is permitted to establish non-Article III courts, more commonly referred to as legislative courts, vested with general jurisdiction to decide matters in the territories of the United States, to serve as military tribunals, and to adjudicate disputes involving public rights.[16] The creation of such legislative tribunals has been understood to be proper and consistent with the powers expressed in Article I of the Constitution.[17] Article I courts, however, may only address a narrow

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[12] The Federalist No. 4. at 22-24 (John Jay).

[13] *See* In re Millenium Seacarriers, Inc., 419 F.3d 83, 85–86 (2d Cir. 2005).

[14] *See* U.S. CONST. art. I § 1, art. III § 1–2.

[15] Wellness Intern. Network, Ltd. V. Sharif, 575 U.S. 665, 669 (2015).

[16] *Wellness*, 575 U.S. at 689–90 (Roberts, C.J., dissenting).

[17] F. Andrew Hessick, *Consenting to Adjudication Outside the Article III Courts*, 71 VAND. L. REV. 715, 716 n.5 (2018) (This Comment will not fully address the intricate and expansive history, creation process, or various operational aspects of legislative courts. This Comment is limited to broadly identifying the limitations and differences between an Article I versus Article III court for the purposes of addressing *Millenium*'s holding. For an in-depth analysis on legislative courts *see e.g.*, Richard H. Fallon, Jr. *Of Legislative Courts, Administrative Agencies, and Article III*, 101 HARV. L. REV. 915 (1988); James E. Pfander, *Article I Tribunals, Article III Courts, and the Judicial Power of the United States*, 118 HARV. L. REV. 643 (2004)).

scope of issues.[18] Legislative courts are almost always tied to an Article III court through statutory provisions mandating judicial oversight and control.[19] In cases where such provisions are absent, the judiciary has maintained the inferior status of legislative courts by presuming the necessity of Article III court's judicial review.[20]

Central to the conflict in *Millenium* is the issue of legislative courts adjudicating cases involving public rights. The public rights doctrine originates from *Murray's Lessee v. Hoboken Land & Improvement Co.*[21], and refers to cases involving the adjudication of "rights belonging to the people at large."[22] Conversely, private rights are those that are inalienable to individuals.[23] The critical distinction between the two is that only public rights may be disposed of without an exercise of judicial power.[24] Judicial power is exercised by courts possessing the characteristics prescribed by Article III, § 1 of the Constitution, which provides life tenure and compensation to judges who exercise "good behavior."[25] "Good behavior" has been interpreted to mean that judges serve life terms, subject only to removal upon impeachment.[26] This definition of judicial power serves to ensure that the judiciary of Article III is independent from the control and politics that exist within the Executive and Legislative branches.[27] Bankruptcy judges do not exercise true judicial power, nor do they share many of the core attributes that have come to define Article III judges.

A key distinction between a judge serving in a district court and one serving in a bankruptcy court is the constitutional basis for each judge's authority. Bankruptcy judges are Article I judges who are appointed and may be removed by Article III judges.[28] A bankruptcy judge has a much narrower scope of cases they can hear as a result of their limited authority when compared to an Article III judge.[29] Bankruptcy judges serve in the role of judicial officer for the district court.[30] In *Northern Pipeline Constr. Co. v. Marathon Pipeline Co.*, the Supreme Court held that the broad granting of jurisdiction over equity, law, and admiralty was unconstitutional because it removed most, if not all, of the judicial power from the Article III district courts.[31] A key consideration for the *Northern Pipeline* decision was that a bankruptcy judge is not an Article III judge.[32] The core proceeding "of debtor-creditor relations . . . [is] distinguish[able] from the adjudication of state-created private rights" which falls solely within the purview of an Article III court.[33] The *Northern*

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[18] *Wellness*, 575 U.S. at 689–90. (Roberts, C.J., dissenting).
[19] *See* Pfander, *supra* note 17, at 721.
[20] *Id.*
[21] *See* Murray v. Hoboken Land & Improvement Co., 59 U.S. 272 (1855).
[22] *Wellness*, 575 U.S. at 713 (Thomas, J., dissenting).
[23] *Id.*
[24] *Id.*
[25] Northern Pipeline Constr. Co. v. Marathon Pipeline Co., 458 U.S. 50, 59 (1982).
[26] *Id.*
[27] *Id.*
[28] 28 U.S.C.A. § 152(a)(1), (e) (West 2021).
[29] *Northern Pipeline*, 564 U.S. at 94–95.
[30] 28 U.S.C.A. § 151 (West 1984).
[31] *Northern Pipeline*, 458 U.S. at 87.
[32] *See id.* at 60–61.
[33] Exec. Benefits Ins. Agency v. Arkison, 573 U.S. 25, 32–33 (2014) (quoting *Northern Pipeline*, 564 U.S. at 71–72).

Pipeline decision reinforced the principal that the full adjudication of maritime law issues is improper before a bankruptcy court because Article III, not Article I, gives federal courts exclusive admiralty jurisdiction.[34]

Congress responded to the *Northern Pipeline* decision by enacting the Bankruptcy Amendments and Federal Judgeship Act of 1984, making bankruptcy judges adjuncts of the district court.[35] It was deemed proper to establish adjunct judges in Article I legislative courts, so long as the essential attributes of judicial power were maintained by Article III courts.[36] It is not essential that all aspects of a case within the jurisdiction of an Article III court be determined by an Article III judge.[37] In cases of admiralty and equity, it is a longstanding practice for Article III courts assisted by outside parties in making determinations of fact.[38] The distinctions between Article I and Article III courts and judges are critical to understanding how the legal issues in maritime and bankruptcy claims are properly resolved.

B. Bankruptcy Proceedings

Article I, Section 8 of the Constitution empowers Congress to create uniform laws "on the subject of Bankruptcies throughout the United States."[39] Bankruptcy courts are granted exclusive statutory jurisdiction over all property of the debtor, known as the bankruptcy estate, as of the commencement of a bankruptcy case.[40] Upon the filing of a bankruptcy petition, the Bankruptcy Code imposes an automatic stay that functions as an injunction, protecting the debtor from all collection efforts and foreclosure actions against estate property.[41] A bankruptcy estate is created at the time of filing and includes "all legal or equitable interests of the debtor in property as of the commencement of the case."[42] Conceptually, the creation of a bankruptcy estate, into which the debtor's property is consolidated for accounting and judgment, renders a bankruptcy proceeding an *in rem* action against the estate, rather than an *in personam* action against the debtor. A bankruptcy discharge is effective only for debts[43] that constitute a liability on a claim. A claim is a right to payment, whether that right is unliquidated, contingent, unmatured, disputed, secured, or unsecured.[44] Only debts for which the debtor is personally liable are discharged.[45] Liens securing claims against the debtor's property are not discharged or altered in a bankruptcy proceeding.[46] Liens that are not addressed or adjudicated during the bankruptcy proceedings survive the

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[34] *See Northern Pipeline*, 564 U.S. at 71–72 (discussing the scope of Congressional powers to create courts for "specialized area[s]" of law).
[35] *See* 28 U.S.C.A. § 151 (West 1984).
[36] *See* Crowell v. Benson, 285 U.S. 22, 50 (1932).
[37] *Id.* at 51.
[38] *Id.*
[39] U.S. CONST. art. 1, § 8, cl. 4.
[40] 28 U.S.C.A § 1334(e)(1) (West 2005).
[41] Thomas J. Holthus, *A Debtor as a "Creditor" and the Automatic Stay*, 62 Am. BANKR. L.J. 377, 380 (1988) (citing 11 U.S.C § 362(a)).
[42] 11 U.S.C. § 541(a)(1) (2021).
[43] *See* 11 U.S.C. § 727(b), § 1141(d) (containing discharge provisions for Chapters 7 and 11).
[44] 11 U.S.C.A. § 101(5)(a) (West 2022).
[45] *See id.*
[46] 11 U.S.C. § 506(d)(2).

discharge, as the *in rem* rights of lienholders are unaffected by the eliminations of the debtor's personal liability.[47]

a. Chapter 11 Bankruptcy

The overarching purpose of a Chapter 11 case in bankruptcy is to allow a debtor to pay reduced levels of accrued debt over a set period for the purpose of preserving the economic value of a business rather than selling it off at present value.[48] The primary function and purpose of Chapter 11 of the Bankruptcy Code is to "enable a debtor company to reorganize its business under a court-approved plan governing the distribution of assets to creditors."[49] In a Chapter 11 proceeding, various claims of the business are classified and approved for a course of treatment under the plan arranged by the involved parties.[50] Chapter 11 plans may also provide for the sale of property of the estate and may distribute the proceeds among interest holding creditors.[51] In a Chapter 11 reorganization, upon notice and a hearing,[52] the trustee can sell property of the estate free and clear of any interest in such property only if applicable non-bankruptcy law permits the sale, free and clear of any interests.[53] Once a Chapter 11 reorganization plan is confirmed by the court, it becomes binding on the debtor and all creditors, equity holders, and partners—regardless of whether they voted for, against, or did not vote on the plan.[54] After an effective discharge under a reorganization case, there is an automatic statutory injunction that goes into effect to protect the debtor.[55] Violations of the injunction by creditors can result in contempt of court if there is no "'fair ground of doubt as to the wrongfulness of the defendant's conduct.'"[56]

b. Core vs Non-Core Proceeding in Bankruptcy

The distinction between core and non-core matters outlines the balance that has been struck to keep bankruptcy courts effective while ensuring they decide matters that are primarily bankruptcy related. The Bankruptcy Code authorizes bankruptcy courts to hear and determine all such core claims and to enter judgments on them.[57] Before a bankruptcy case can proceed on a core matter, the bankruptcy judge must determine whether the specific proceeding is a core proceeding or designated as a core proceeding by the Bankruptcy Code which include determinations as to the dischargeability of certain debts, objections to discharge, and orders

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[47] *See* Long v. Bullard, 117 U.S. 617, 620–21 (1886); *see Discharge in Bankruptcy – Bankruptcy Basics*, UNITED STATES COURTS, https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/discharge-bankruptcy-bankruptcy-basics (Accessed Mar. 31, 2025).

[48] Hon. Lisa Hill Fenning, *The Future of Chapter 11: One View from the Bench*, 1993 NORTON ANN. SURV. OF BANKR. L. 2, 1 (2016) (for an in-depth history and analysis of Chapter 11 Bankruptcy *see* Charles J. Tabb, *The Future of Chapter 11*, 44 S.C. L. REV. 791 (1993)).

[49] U.S. Bank Nat'l Ass'n v. Vill. at Lakeridge LLC, 583 U.S. 387, 389 (2018) (citing 11 U.S.C. § 1101 *et seq.*).

[50] *See* 11 U.S.C. § 1123(a).

[51] 11 U.S.C. § 1123(b)(4).

[52] 11 U.S.C. § 363(b)(1).

[53] 11 U.S.C § 363(f)(1).

[54] 11 U.S.C. § 1141(a).

[55] *See* 11 U.S.C. § 524(a)(2), (i).

[56] Taggart v. Lorenzen, 587 U.S. 554, 556 (2019) (internal citation omitted).

[57] 28 U.S.C. § 157(b)(1)–(2).

approving the use and lease of property.[58] After the bankruptcy court renders a final judgment, a party may properly take an appeal to the district court, where the judgment will be reviewed under traditional appellate standards.[59] Non-core proceedings are those that the bankruptcy court hears and submits proposed findings of fact and conclusions of law to the district court.[60] When proposals of non-core matters are submitted, the district court reviews the fact finding and conclusions of law *de novo* and enters a final judgment.[61] The parties may consent to the designation of an issue as core and for the bankruptcy court to proceed as such.[62]

As previously mentioned, bankruptcy courts have exclusive jurisdiction over all property of the debtor and the estate at the inception of the bankruptcy case.[63] The protection granted via the automatic stay is not permanent nor absolute and can be altered or even lifted on petition of a creditor seeking particular relief.[64] Specifically, jurisdictional authority exists to modify or lift, in a limited capacity, the automatic stay to permit maritime lienholders to arrest and execute maritime liens against the vessel.[65] It also must be acknowledged that admiralty jurisdiction has not been given or granted to bankruptcy courts.[66]

C. Admiralty Jurisdiction and Proceeding

Admiralty jurisdiction is vested with the federal courts through Article III of the U.S. Constitution: "The judicial [p]ower shall extend to all [c]ases … of admiralty and maritime [j]urisdiction."[67] Within Article III, there are three implied grants of admiralty jurisdictional authority.[68] First, Article III allows Congress to bestow upon inferior federal courts the same admiralty and maritime jurisdiction, as possessed by the Supreme Court.[69] Second, when federal courts exercise their admiralty jurisdiction, it is proper to utilize the substantive general maritime law inherent in admiralty jurisdiction as well as to continue developing admiralty law "within constitutional limits."[70] Third, Congress may "revise and supplement . . . maritime law within the limits of the Constitution."[71] For instance, because an *in rem* suit against a vessel is a distinct admiralty proceeding, it is exclusively within the realm of federal courts, specifically sitting in

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58 *See* 28 U.S.C. § 157(b)(2)(I, J, & M).
59 Exec. Benefits v. Arkinson, 573 U.S. 25, 33–34 (citing Northern Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 71–72). Traditional appellate standards consist of *de novo* review of issues of law, *see* Highmark, Inc. v. Allcare Health Management System Inc., 572 U.S. 559 (2014), and clear error standard for findings of fact, *see* Fed. Rule Civ. Proc. 52(a)(6) (clear-error standard); Fed. Rules Bkrtcy. Proc. 7052 and 9014(c) (which apply FRCP 52 to bankruptcy proceedings).
60 *Exec. Benefits*, 573 U.S. at 34.
61 *Id.*
62 *Id.*
63 28 U.S.C. § 1334(e)(1).
64 28 U.S.C. § 362(a) (providing that upon request of a party and a hearing, the court may grant relief from the stay for various reasons).
65 *See* In re Carlomagno Shipping, S.A. 185 B.R. 25, 26 (E.D. La. 1995).
66 The Philomena, 200 F. 859, 861 (D. Mass. 1911).
67 U.S. CONST. art. 3, § 2, cl. 1.
68 Romero v. Intn'l Terminal Operating Co., 358 U.S. 354, 361 (1959).
69 *Id.*
70 *Id.* at 360–61 (emphasis added) (citing Crowell v. Benson, 285 U.S. 22, 55 (1932)).
71 *Id.* at 361 (emphasis added).

admiralty.[72] The Judiciary Act of 1789[73] grants federal courts sole authority to hear *in rem* cases that fall under admiralty jurisdiction.[74] Likewise, it is well-settled law that federal district courts exercise exclusive jurisdiction over the enforcement of maritime liens *in rem*, as the judgments and sales resulting from maritime liens have effects on the whole world.[75] Federal courts have an independent duty "to determine the presence or absence of subject matter jurisdiction" of a court on their own accord.[76] It is well understood that a maritime lien may be enforced only through an action proceeding *in rem*.[77] The maritime lien and the admiralty *in rem* proceeding are correlative and "where one exists, the other may be taken, and not otherwise."[78] The *in rem* proceeding developed with the primary goal of expanding the reach of courts in order to allow actions against vessels where the owner could not be reached.[79] Admiralty jurisdiction is an indispensable condition of adjudicating a maritime lien and the two cannot be properly understood separately.

D. Maritime Liens

Maritime liens lay at the core of the *Millenium* case and must be understood properly to fully understand the implications of *Millenium's* holding. The rules surrounding maritime liens are statutory.[80] Maritime liens exist when a party has a privileged claim on maritime property, most commonly a vessel, arising out of services to maritime property or when injuries are caused by the vessel.[81] A number of different transactions and occurrences within the world of admiralty jurisdiction result in the creation of maritime liens.[82] A prerequisite for the existence of a maritime lien is the presence of admiralty jurisdiction.[83] Though various maritime liens exist, *Millenium* addresses the specific lien of a preferred ship mortgage.[84] "A preferred mortgage is a lien on the mortgaged vessel in the amount of the outstanding mortgage indebtedness secured by the vessel."[85]

The Commercial Instruments and Maritime Liens Act ("CIMLA") is the federal statutory authority that governs maritime liens, including those on a vessel.[86] CIMLA requires that to discharge a preferred mortgage lien or a maritime lien, the vessel must be sold by order of a district

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72 American Dredging Co. v. Miller, 510 U.S. 443, 446–47 (1994) (citing The Moses Taylor, 71 U.S. 411, 431 (1866)).
73 An Act to Establish the Judicial Courts of the United States, Pub. L. No. 1-20, 1 Stat. 73 (1789) [hereinafter The Judiciary Act of 1789].
74 *See also* Leopard Marine & Trading, Ltd. v. Easy Street Ltd., 896 F.3d 174, 187 (2d Cir. 2018) (citing § 1333).
75 *See* Leon v. Galcerna, 78 U.S. 185, 190 (1870).
76 *Leopard Marine*, 896 F.3d at 181.
77 *Id.* at 182 (citations omitted).
78 The Rock Island Bridge, 73 U.S. 213, 215 (1867).
79 *Leopard Marine*, 896 F.3d at 183 (citing Republic Nat'l Bank of Miami v. United States, 506 U.S. 80, 87 (1992); Continental Grain Co. v. The FBL-585, 364 U.S. 19, 23 (1960)).
80 Commercial Instruments and Maritime Liens, 46 U.S.C.A. § 31301 (West 2010).
81 1 THOMAS J. SCHOENBAUM, *Admiralty and Maritime Law* § 9:1 (6th ed. 2018).
82 *Id.*
83 Norton v. Switzer, 93 U.S. 355, 356 (1876); *see also id.* at n.17.
84 *Millenium*, 419 F.3d at 89-90.
85 46 U.S.C.A. § 31325(a) (West).
86 46 U.S.C.A. § 31326 (West).

court in a civil *in rem* action to officially deliver the vessel free and clear of any liens.[87] The jurisdiction of admiralty courts over maritime liens is exclusive, and because other courts are without power to establish or enforce maritime liens, they also lack the power to discharge maritime liens.[88] The statutory framework set forth in CIMLA runs counter to *Millenium's* holding because, even if the faulty premise is accepted (that bankruptcy courts can be granted jurisdictional authority by consent of the parties), the governing statutory authority dictates that the discharge of maritime liens can only be accomplished through a federal district court sale in an *in rem* action.[89]

E. Admiralty vs Bankruptcy

The objectives and goals of bankruptcy law differ significantly from their counterparts in maritime law.[90] Bankruptcy law is designed to provide debtors with a fresh start while ensuring the equitable treatment of creditors.[91] In contrast, maritime law—shaped by the inherently mobile nature of maritime property—emphasizes the protection of creditor rights and prompt remedy enforcement.[92] A common area where admiralty and bankruptcy jurisdiction clashes arises when a maritime debtor files a petition for bankruptcy in a *in custodia legis* proceeding.[93]*In custodia legis* is an equitable doctrine that gives the first court to obtain lawful possession over the property the ability to administer a remedy for that property.[94] Many cases do not implicate the doctrine of *custodia legis*. The few cases that do implicate the doctrine are called "*Stern* claims," where often times,[95] the bankruptcy court must determine whether it has constitutional authority to adjudicate a given matter, even if the claim is statutorily classified as a "core proceeding."[96]

F. Maritime Law & Uniformity

The Framers of the United State Constitution specifically vested authority over admiralty and maritime cases in federal courts for a multitude of reasons including (1) concern for the uniformity of maritime decisions and laws, (2) the need to ensure matters involving foreign affairs and laws were assigned to the federal judiciary, (3) the practical necessity of adjudicating cases involving entirely foreign litigants, and (4) the regulation and protection of trade and commercial interests to and from the United States.[97] These historical considerations remain relevant to the

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[87] 46 U.S.C.A. § 31326 (West).
[88] The Philomena, 200 F. 859, 861 (D. Mass. 1911).
[89] 46 U.S.C.A. § 31326 (West).
[90] John R. Ashmead & Bruce G. Paulsen, *Culture Clash: The Intersection of Maritime Law and the United States Bankruptcy Code*, 28 U.S.F. MAR. L.J. 117, 118 (2016).
[91] *Id.*
[92] Ashmead & Paulsen, *supra* note 90, at 118.
[93] *See, e.g.*, Morgan Guar. Trust Co. of New York v. Hellenic Lines Ltd., 585 F. Supp. 1227 (S.D.N.Y. 1984) [hereinafter Hellenic I]; *see* The Casco, 230 F. 929 (D. Mass. 1916); In re McLean Indus., Inc., 857 F.2d 88, 90 (2d Cir. 1988).
[94] *Hellenic I*, 585 F. Supp. at 1229.
[95] *See* Stern v. Marshall, 564 U.S. 462 (2011). This case serves as the foundation for challenges to a bankruptcy court entering a final judgment on a core matter on grounds that the court lacks Constitutional authority to do so.
[96] *See id.*
[97] SCHOENBAUM, *supra* note 81, at § 1:7.

modern understanding of maritime law and its prominent role in American business, legal, and transportation sectors.

The grant of admiralty jurisdiction to federal courts provides uniform rules and remedies for businesses engaged in shipping, transportation, and commerce, as well as for individuals who travel or work in connection with maritime activities.[98] This jurisdictional framework, however, is subject to certain qualifications—particularly with respect to Congress's authority to modify admiralty jurisdiction. First, any such modifications must be consistent with the Constitution. Second, and equally importantly, Congress does not possess the authority to eliminate or substantially alter or undermine the uniformity of maritime law.

Article III's grant of admiralty jurisdiction not only confers adjudicative power but also incorporates into United States law the substantive body of maritime law.[99] When admiralty jurisdiction exists, the application of substantive maritime law is required.[100] Substantive maritime law, often referred to as general maritime law, is a composite of traditional common-law principles, newly developed doctrines, and modified legal rules derived from both state and federal sources.[101] The near universal use and application of maritime law throughout the world is what makes maritime law distinctive.[102] One of the essential characteristics of maritime law is uniformity.[103] The derailing and movement of maritime law in the direction of a single interest group, the interest of bankruptcy debtors for example, is antithetical to this fundamental precept of maritime law.[104]

III. IN RE: MILLENIUM SEACARRIERS, INC.

On August 11, 2005, then-Circuit Judge Sonia Sotomayor of the United States Court of Appeals for the Second Circuit authored the opinion in *In re: Millenium Seacarriers, Inc*.[105] The appeal, instituted by Universal Oil ("Universal"), Liberian International Ship & Corporate Registry ("LISC"), and Praxis Energy Agents S.A. ("Praxis") (collectively, "Lienors"), challenged an order of the United States District Court for the Southern District of New York, which had affirmed a grant of summary judgment by the Bankruptcy Court for the Southern District of New York in favor of Allfirst Bank ("Allfirst") and Wayland Investment Funds, LLC ("Wayland") (collectively, "Defendants").[106]

Wayland owned a majority of the first priority ship mortgage notes issued by Millennium Seacarriers, a company created to hold capital stock of various vessel-owning subsidiaries.[107] Following further proceedings, Millenium voluntarily filed for relief under Chapter 11[108] of the

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[98] SCHOENBAUM, *supra* note 81, at § 3:2.
[99] SCHOENBAUM, *supra* note 81, at § 4:1.
[100] East Rivers S.S. Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 864 (1986).
[101] *Id.* at 864–65.
[102] The Lottowanna, 88 U.S. 558, 566 (1874).
[103] *Id.*
[104] *Id.*
[105] *Millenium*, 419 F.3d at 85.
[106] *Id.*
[107] *Id.* at 86.
[108] Luke J. Doherty, *Chapter 11 Bankruptcy & Corporate Accountability: How Large Economic Players Use Reorganization as a Liability Shield*, 6 BUSETXLR 73, 73 (2022) (defining Chapter

Bankruptcy Code in the Bankruptcy Court for the Southern District of New York.[109] After a hearing between Wayland and Millenium, the parties agreed to sell all of Millenium's assets free and clear of liens and claims.[110] The agreement consisted of a sale motion under Section 363 of the Bankruptcy Code,[111] providing for the sale of all of Millenium's assets primarily by way of mortgage credit bid.[112] After this motion was entered, Lienors asserted maritime liens and formally objected to the sale motion.[113] The principal objection to the sale motion was that only an admiralty court, exercising *in rem* jurisdiction and applying maritime law, could discharge a vessel of maritime liens.[114] Accordingly, Lienors argued that the bankruptcy court lacked both the statutory and constitutional authority to order and enforce the stated objective of the sale motion.[115] This argument failed at the district court level.[116] Thereafter, Lienors appealed the district court's decision to the Second Circuit.[117]

The Second Circuit held that the Lienors consented to the bankruptcy court's equitable adjudication of their respective maritime lien claims.[118] The court further determined that, by filing and litigating their claims before the bankruptcy court, the Lienors validly consented to its jurisdiction.[119] The Second Circuit further affirmed the district court's holding that the liens had been fully extinguished as a matter of maritime law, as the bankruptcy court properly applied relevant maritime law.[120] The appellate court rejected the appellants' objection to the bankruptcy court's subject matter jurisdiction, reasoning that (1) under the doctrine of *custodia legis*, bankruptcy courts have historically been competent to adjudicate maritime liens;[121] (2) the bankruptcy court had sufficient subject matter jurisdiction over the appellant's liens because ranking maritime liens constitutes a core proceeding;[122] and (3) the voluntary submission of claims to the bankruptcy court obviated any constitutional concern regarding the exercise of maritime remedies, as federal admiralty jurisdiction has never been entirety exclusive, and exclusivity was not implicated under the facts of this particular dispute.[123]

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11 bankruptcy as corporate reorganization that allows a business to continue operating on the condition that its assets are reorganized to repay creditors).

[109] *Millenium*, 419 F.3d at 86.

[110] *Id.*

[111] 11 U.S.C. § 363 (b)(1) (explaining that the bankruptcy trustee can sell property of the estate to satisfy the debts of the debtor).

[112] *Millenium*, 419 F.3d at 86.

[113] *Id.*

[114] *Id.* at 86–87.

[115] *Id.* at 86–87.

[116] *Id.* at 87–91.

[117] *Id.* at 91.

[118] *Millenium*, 419 F.3d at 102–03.

[119] *Id.*

[120] *Id.*

[121] *Id.* at 94–95.

[122] *Id.* at 96.

[123] *Millenium*, 419 F.3d at 102–03.

IV. THE SUPREME COURT & THE *MILLENIUM* HOLDING

The issues raised in *Millenium* would now be classified by the courts as *Stern* claims. In *Wellness Intern. Network, Ltd. V. Sharif*, the Supreme Court held that *Stern* claims may be adjudicated by a bankruptcy court so long as the parties knowingly and voluntarily consent to the adjudication of this type of claim.[124] The Second Circuit interpreted the voluntary consent and continued participation of the Lienors in *Millenium* as consent to the bankruptcy court's equitable jurisdiction to adjudicate their maritime lien claims.[125] The ruling in *Wellness* appears to be in tension and contradiction with the Court's earlier decision in *Commodity Futures Trading Com'n v. Schor*, which *Wellness* does not purport to overrule. In *Schor*, the Court held that parties cannot cure a violation of Article III's structural protections by consent, just as the parties' consent cannot confer subject matter jurisdiction on a federal court beyond the limits prescribed in Article III of the Constitution.[126] The holding in *Schor* is consistent with basic concepts of separation of powers and limited subject matter jurisdiction for courts.

Nevertheless, both *Millenium* and *Wellness* maintained that consent and voluntary submission by the parties permits a bankruptcy court the ability to discharge a maritime lien on a vessel and deliver that vessel free and clear of any prior maritime liens.[127] The Court in *Wellness* distinguished its holding from that in *Stern*, emphasizing that the core issue was not the absence of jurisdiction, but the absence of true consent by the parties involved.[128] Moreover, *Wellness* relied heavily on the "practical effect" of its decision on the balance between district court authority and bankruptcy court efficiency.[129] Ultimately, *Wellness* reinforced the principle that consent to adjudication within bankruptcy court is a critical element of the bankruptcy court's equitable powers.

V. ANALYSIS

It is well established that the exclusive authority to sell a vessel free and clear of maritime liens belongs to a federal district court sitting in admiralty. Accordingly, a bankruptcy court's attempt to effectuate such a sale would conflict with substantive maritime law, Article III of the Constitution, the Commercial Instruments and Maritime Lien Act, and the Bankruptcy Code. Although the *Millenium* holding has generated significant precedent and procedural concerns, it is not beyond the possibility of correction.

a. Admiralty and Bankruptcy Flaws in *Millenium*

If Congress, in exercising its authority under the Bankruptcy Clause of the Constitution,[130] has attempted to allow the discharge of maritime liens on a vessel and delivering the vessel free of such liens through a bankruptcy court, it is changing a well-established principle of the general maritime law. However efficient or convenient this change may appear, it directly conflicts with

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[124] *See* Wellness Intn'l Network, Ltd. v. Sharif, 575 U.S. 665, 669 (2015).
[125] *Millenium*, 419 F.3d at 95.
[126] Commodity Futures Trading Com'n v. Schor, 478 U.S. 833, 851 (1986).
[127] *See Millenium*, 419 F.3d at 103–04; *Wellness*, 575 U.S. at 669.
[128] *Wellness*, 575 U.S. at 681.
[129] *See id.* at 678.
[130] U.S. CONST. art. 1, § 8, cl. 4.

the constitutional limitations on Congress's authority to modify maritime law.[131] Granting Congress the power to affect such could raise significant concerns for maritime investors, commercial actors, and for international legal comity. For instance, a foreign jurisdiction may refuse to recognize the authority of a United States bankruptcy court to discharge maritime liens, particularly where such courts are not sitting as Article III courts in admiralty.

The doctrine of *custodia legis* is often invoked as a solution to the issue of whether a bankruptcy court or an admiralty court should be in charge of the ultimate fate of maritime liens. However, *custodia legis* was not an applicable doctrine in the *Millenium* and *Wellness* decisions. By foregoing a constitutional and jurisdictional analysis, the Second Circuit's *Millenium* opinion was improper. It is the court's responsibility to determine the legitimacy and existence of a court's jurisdiction, irrespective of whether the parties have consented to adjudication by that particular court.

An important distinction between *Millenium* and the traditional admiralty approach—such as that exemplified in *Leopard Marine & Trading, Ltd. v. Easy Street Ltd.*—is that equitable jurisdiction was typically exercise by a district court sitting in admiralty.[132] In that context, the waiver of *in rem* jurisdiction was valid only insofar as the district court was the traditional forum for adjudicating such claims.[133] This type of jurisdictional waiver is not analogous to the facts in *Millenium*. In *Millenium*, the vessel was to be sold in bankruptcy court, despite neither the vessel or *res* being within the bankruptcy court's jurisdiction or control.[134] These markedly different circumstances demonstrates that the ability of parties in admiralty cases to agree to certain equitable jurisdictional questions does not confer upon a bankruptcy court broad discretion to invoke equity to resolve questions of jurisdiction.

b. Constitutional Analysis

As an Article I court, bankruptcy courts—and their judges—regularly adjudicate claims involving both private and public rights and thereby exercise authority and jurisdiction over certain matters. However, the Bankruptcy Clause of Article I should define the constitutional scope of cases and controversies that may be properly resolved outside the Article III judicial system.[135] Congress's power to authorize bankruptcy courts to decide such matters must remain confined within the historical boundaries traditionally subject to adjudication by a bankruptcy court.[136]

The Supreme Court's decision in *Northern Pipeline* underscores the Court's refusal to extend broad jurisdiction to bankruptcy courts over admiralty claims, in light of the Constitution's vesting of admiralty power exclusively in Article III courts.[137] The historical discharge of debts within bankruptcy proceedings distinctly precludes the complete resolution of the rights of a maritime lienor.

A maritime lien is a strictly property-based interest, enforceable solely against the vessel itself, and therefore, the authority to adjudicate such rights is beyond the constitutional scope of a

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[131] East Rivers S.S. Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 864–65 (1986).
[132] Leopard Marine & Trading, Ltd. v. Easy Street Ltd., 896 F.3d at 181.
[133] *Id.*
[134] *See Millenium*, 419 F.3d at 101-02.
[135] *Wellness*, 575 U.S. at 706 (Thomas, J. dissenting).
[136] *Id.*
[137] *See Northern Pipeline*, 564 U.S. at 62-63.

bankruptcy court's power. Even the majority opinion in *Wellness* acknowledged that bankruptcy courts have limited ability to resolve specifically narrow matters that are "incident[al] to [their] primary, and unchallenged, adjudicative function."[138]

A bankruptcy court cannot be properly understood to possess constitutional authority over claims historically reserved for Article III district courts. Article I courts, or legislative courts, differ fundamentally from Article III courts. Unlike their Article III counterparts, legislative courts do not enjoy the same constitutional protections of judicial independence that arise from the Constitution's separation of powers.[139] Legislative courts are subject to change as the legislative branch deems necessary and requires no heightened constitutional scrutiny which would be required to alter Article III courts.[140] In contrast, Article III courts possess structural protections designed to ensure judicial independence, protections unavailable to adjunct or levitative tribunals.[141] Understanding the limited roles bankruptcy judges play as officers of the district court illuminates why the bankruptcy judge is not properly endowed with the constitutional grant of authority to discharge a maritime lien. The Constitution's exclusive vesting of admiralty jurisdiction to Article III courts, coupled with the legislative nature of bankruptcy courts, precludes bankruptcy judges from taking such an action.

The fundamental error underlying *Millenium* and *Wellness* is the conflation a party's ability to waive a public right with the jurisdictional limitations inherit in federal courts. Core proceedings involving creditor-debtor relations are distinct from the adjudication of state-created private rights, which fall exclusively within the jurisdiction of Article III court.[142] While parties in a bankruptcy proceeding may consent to waive their public rights and permit adjudication by a bankruptcy judge, such consent does not, and cannot, confer jurisdiction or judicial authority upon an Article I court where it does not otherwise exist. The waiver of a public right has never been sufficient to vest a court with jurisdiction that it otherwise lacks under the Constitution. Although legislative courts, including bankruptcy courts, serve an essential function in managing proceedings within their proper scope, there is simply no constitutional ground for empowering a bankruptcy court to adjudicate matters that fall outside their jurisdictional limits. Only a statutory grant that comports with the Constitution's separation of powers could conceivably alter the structural limitations imposed on such tribunals to permit them to function analogously to Article III courts.

The constitutional implications of permitting parties to consent to a court's adjudication of matters it is not otherwise empowered to decide are profound and undermine the structural integrity of both admiralty and bankruptcy law. The Second Circuit's decision in *Millenium* and the Supreme Court's subsequent holding in *Wellness* rest on the premise that a party's submission or consent to the adjudication of certain claims in bankruptcy is sufficient to confer authority. However, this reasoning is incompatible with the fundamental principle that certain structural rights cannot be waived, regardless of the parties' willingness. A party's consent necessarily raises

[138] *Wellness*, 575 U.S. at 680. (citing *Schor*, 478 U.S. at 854).
[139] *See* Kaufman, Chilling Judicial Independence, 88 Yale L.J. 681, 713 (1979); United States v. Will, 449 U.S. 200, 217–218 (1980).
[140] U.S. Const. Art. III, § 1.
[141] *Will*, 449 U.S. at 217-18.
[142] Executive Benefits Ins. Agency v. Arkison, 573 U.S. 25, 32–33 (2014) (citing *Northern Pipeline*, 564 U.S. at 71–72).

the question of whether such consent itself violates the Constitution. Properly framed, this inquiry turns on whether the relevant practice is supported by a long-standing historical tradition.

Justice Clarence Thomas's dissent in *Wellness* provides compelling insight into why both *Wellness* and *Millenium* were wrongly decided with respect to the constitutional and statutory limits on bankruptcy court authority. As Justice Thomas observes, the Constitution "does not permit individuals to bestow additional power upon the Government."[143] His dissent emphasizes that judicial power is vested exclusively in Article III courts, and accordingly, non-Article III courts, such as bankruptcy courts, cannot exercise it.[144] In the context of a maritime claim, courts have an independent duty to determine the presence or absence of subject matter jurisdiction.[145] If admiralty and bankruptcy law continue to implement the reasoning and holdings of *Millenium* and *Wellness*, there would be severe consequences for the integrity of admiralty courts. A bankruptcy court's ability to discharge maritime liens from a vessel would divert significantly from a long-laid historical precedent that only federal district courts sitting in admiralty could enforce or discharge a maritime lien.

c. Statutory Analysis

Apart from the constitutional issues raised in *Millenium*, the Second Circuit's holding also suffers from several statutory flaws, as maritime liens are governed by statute. Within the Bankruptcy Code exists a broadly understood mandate to discharge and enjoin all claims and actions against the debtor for any debt that the debtor is personally liable for.[146] Bankruptcy discharge only affecting the personal liability of a debtor provides for a significant contradiction in the *Millenium* holding and analysis of how a bankruptcy court could successfully adjudicate maritime liens from a pure statutory interpretation standpoint. The rationale behind the holdings of *Millenium* and *Wellness* is that by voluntarily entering a bankruptcy proceeding, debtors in bankruptcy can acquire a discharge of their maritime liens in a bankruptcy court.[147] The Second Circuit's approach seems to suggest that the bankruptcy court must be able to adjudicate all debts of the debtor's estate to effectively carry out its congressional mandate to adjudicate and discharge claims on the property of the estate. Considering the statutory provision in Section 506(d), there is no reason for a single maritime debtor to enter into a bankruptcy case and prove a lien as a secured claim.[148]

The basis for a maritime lien is a distinctive feature of maritime law.[149] This supports the proposition that a court lacking proper admiralty jurisdiction is without authority to enforce and fully adjudicate maritime liens. A plain reading of the statutory language of CIMLA demonstrates that the discharge of a maritime lien on a vessel is undertaken exclusively through a district court sitting *in rem* exercising its exclusive admiralty jurisdiction.[150] The statute contains no reference to any alternative means of achieving the sale of a vessel discharged of all pervious liens. Within

[143] *Wellness*, 575 U.S. at 706 (Thomas J., dissenting).
[144] *Id.* at 709.
[145] *Leopard Marine*, 896 F.3d at 181 (citation omitted).
[146] 11 U.S.C. § 524(a)(1)–(2).
[147] *See* In re Millenium Seacarriers, Inc., 419 F.3d 83, 92, 103–04 (2d Cir. 2005); *see Wellness*, 575 U.S. at 683–86.
[148] 11 U.S.C. § 506(d).
[149] SCHOENBAUM *supra* note 81, at § 9:1.
[150] 46 U.S.C.A § 31326 (West).

the context of *Millenium*, the court considered the preferred mortgage status of the liens, but the statute treats preferred mortgages and maritime liens as generally identical in their application to the relevant provision.[151] Even if the preferred ship mortgages in *Millenium* were not properly perfected by the lienors, the bankruptcy court's proposal to discharge any maritime lien represented an exercise of judicial authority cognizable only by and Article III court.[152]

The Bankruptcy Code provision permitting parties to consent to the adjudication of a non-core issue to a bankruptcy case does not apply to the case of *Millenium*.[153] The Second Circuit's reasoning that the lienors consented to the bankruptcy court's equitable jurisdiction rests solely on the equitable doctrine of consent.[154] The decision contains scant reference to provisions of the Bankruptcy Code permitting consent, but even if it did, it would not sufficiently demonstrate proper compliance with federal statute. The lienors in *Millenium* continuously objected to the bankruptcy court's authority to discharge the lien on the vessel, and thus the reasoning for consent is highly dubious.[155] Nevertheless, the Second Circuit's concluded that the lienors continued participation in the proceedings, or their failure to withdraw from the case, constituted sufficient grounds for waiver and, therefore, consent to the bankruptcy court's jurisdiction.[156]

d. Maritime Law, Equity, and the *Millenium* Holding

If the statutory framework and equitable doctrines governing bankruptcy courts permit them to discharge maritime liens based on consent, then the very purpose of the CILMA and the Constitution's grant of admiralty jurisdiction over maritime liens could be rendered partially null within the context of a bankruptcy proceeding.

Involvement in a bankruptcy case should not automatically confer upon a bankruptcy court the authority to adjudicate issues that are constitutionally and statutorily vested in an entirely separate branch of government. In *Millenium*, the court declined to decide whether the adjudication of a maritime lien claim by a bankruptcy judge was inappropriate, reasoning instead that the parties consented and that a bankruptcy court possesses equitable powers and jurisdiction.[157] The appeal to equity stands as the centerpiece of the *Millenium* holding.[158] It appears that, despite the constitutional and statutory frameworks, the perceived need for more practical and equitable results was allowed to prevail, largely to preserve the authority and effectiveness of bankruptcy courts.

Despite these intentions, "[t]he fact that a proceeding [in bankruptcy] is equitable does not give the judge a free-floating discretion to redistribute rights in accordance with his personal views of justice and fairness, however enlightened those views may be."[159] Although this observation was made in the context of an asset distribution in a reorganization case, it underscores an important principle when determining the scope of a bankruptcy court's overall and its equitable

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[151] 46 U.S.C.A § 31326 (West).
[152] *See* discussion *supra* Part II.A.
[153] 28 U.S.C. § 157(c)(2).
[154] *See Millenium*, 419 F.3d at 95–96.
[155] *Millenium*, 419 F.3d at 86–87.
[156] *See id.* at 91, 102-103.
[157] *Id.* at 102.
[158] *See id.* at 102–04.
[159] *In re* Chicago, Milwaukee, St. Paul & Pacific R.R., 791 F.2d 524, 528 (7th Cir. 1986).

authority[160]. The equitable nature of bankruptcy jurisdiction is not unlimited and should not be extended to issues for which no equitable remedy is required. The absence of any mention of admiralty liens in the Bankruptcy Code strongly suggests that Congress has not conferred such power upon bankruptcy courts[161]. This is further buttressed by the express grant of admiralty jurisdiction to Article III court's and CIMLA's exclusive grant of discharge of statutory maritime liens to federal district court sitting in admiralty. Moreover, as discussed above, the *in rem* action and the adjudication and discharge of a maritime lien are inseparable; there can be no discharge of a maritime lien absent an *in rem* action in admiralty[162]. By its very nature and procedural conventions, a bankruptcy court is incapable of presiding over an *in rem* admiralty action and therefore cannot properly discharge a maritime lien.

The only basis for allowing an Article I court to take such an action should be a proper statutory conferral of jurisdiction. Bankruptcy's interests in discharging debts does not suffice to preempt constitutional and statutory mandates granting federal district courts the exclusive power to discharge maritime liens.

Although the discharge of maritime liens in bankruptcy could adversely affect commerce and maritime creditors might otherwise enjoy priority status among other claimants in bankruptcy proceedings, there are several practical solutions to the jurisdictional conflict. Congress could amend the Bankruptcy Code to provide that the adjudication of maritime liens constitutes a strictly non-core matter, requiring final adjudication by a federal district court sitting in admiralty. This would ensure that Article III judges, rather than bankruptcy judges, preside over the discharge of maritime liens arising within the broader context of a bankruptcy case, thereby resolving the jurisdictional question. Alternatively, it may be more practical for Congress to enact legislation granting *quasi in rem* jurisdiction concurrent with the jurisdiction of the bankruptcy court so that maritime liens could be adjudicated contemporaneously and satisfy both admiralty and bankruptcy jurisdictional requirements in cases involving debtors with maritime liabilities.[163] Finally, Congress could consider amending CIMLA to expressly authorize bankruptcy courts with the authority to discharge a maritime lien.

Under this new scheme of consent jurisdiction, a vessel owner could declare bankruptcy, and the buyer of a vessel would be granted title and assured by the bankruptcy court that the vessel was discharged of all maritime liens. If the mortgaged vessel later became involved in another civil admiralty suit in a foreign forum, adjudication of the vessel's maritime liens would be required. In such a scenario, the foreign court would face the difficult question of whether to permit one or more maritime lienholders to submit claims against the vessel in the in rem proceeding. If the foreign court recognized and honored the bankruptcy discharge of the liens, no conflict would arise. However, there is a substantial likelihood that the foreign court would instead apply

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[160] *See id.* at 525.

[161] Hamdan v. Rumsfeld, 548 U.S. 557, 578 (2006) (a negative may be drawn from the exclusion of language or a thing not being included); *see* Sebelius v. Cloer, 569 U.S. 369 (2013); Alcoa S. S. Co. v. Federal Maritime Commission, 348 F.2d 756, 759 (D.C. Cir. 1965) (silence is strong evidence that Congress did not intend to grant a particular power).

[162] *Leon*, 78 U.S. at 187–88; *The Philomena*, 200 F. at 861; *Leopard Marine*, 896 F.3d at 182.

[163] *See Quasi-in-rem Jurisdiction*, BLACK'S LAW DICTIONARY, (10th ed. 2014) (setting forth the definition of quasi-in-rem jurisdiction as that "over a person but based on that person's interest in property located within the court's territory").

traditional admiralty law, including the principle that maritime liens may be discharged only through an in rem proceeding in a district court sitting in admiralty.[164] The foreign court might not feel compelled, or even see a legal basis, to treat the separate bankruptcy proceeding as a valid means of discharging maritime liens.

e. Potential Problems & Solutions

The procedure and substantive differences between bankruptcy and admiralty law can result in radically different outcomes for maritime lien holders. Given the generally accepted principle that the uniformity of admiralty law should not be disturbed, it is more appropriate for the Bankruptcy Code and its practices to adapt to the established rules of admiralty rather than the reverse. If all maritime creditors refused to participate in a bankruptcy proceeding, their secured claims would remain intact, and a debtor whose liabilities consisted primarily of maritime liens would be no better off after a successful bankruptcy discharge than before the proceeding began. Conversely, if all maritime creditors participated in a Chapter 11 reorganization but each held only secured claims, such as a first-priority ship mortgage, their rights against the property would survive participation and discharge.

Millenium and its progeny address the extent to which a bankruptcy court may, in equity, serve the debtor by discharging debts within the bankruptcy estate. However, under the statutory framework governing creditor rights with respect to secured in rem claims in bankruptcy, maritime creditors have no reason to believe that such claims could be properly extinguished.[165]Whether or not a maritime creditor participates in a reorganization plan, its secured in rem claims remain unaffected; only *in personam* claims against the debtor are bound by the plan. The holding in *Millenium* rests on the premise that a vessel can be properly discharged if lienors participate in the bankruptcy proceeding.[166]Yet, given the implications of *Millenium*, maritime creditors may be deterred from voluntarily entering a bankruptcy case for fear of losing their in rem secured claims, despite the longstanding historical and statutory understanding that participation in such proceedings would leave those claims intact.

One solution is to amend the Bankruptcy Code to classify the discharge of maritime liens as a non-core matter, requiring referral to the district court for final judgment and *de novo* review, as with other non-core bankruptcy proceedings. This would permit the bankruptcy court to make recommendations to the district court judge. Additionally, an amendment to the Bankruptcy Code could include a procedural requirement that lifts the automatic stay against the debtor's property in bankruptcy cases involving maritime liens specifically allowing for maritime lienholders to execute maritime liens after arrest has been allowed. This solution will demand special considerations to be given to bankruptcy cases if they have maritime liens to adjudicate. However, this does not materially depart from the current state of the law with respect to how maritime liens are treated with different considerations and priority apart from other possible non-maritime lien

[164] See *Leon*, 78 U.S. at 188; *Millenium*, 419 F.3d at 87-88; *Hellenic Lines*, 38 B.R. at 999 (citing G. Gilmore & C. Black, *The Law of Admiralty* § 9–95, at 811 (2d ed. 1975)).
[165] *See* Zerand-Bernal Grp., Inc. v. Cox, 23 F.3d 159 (7th Cir. 1994); *In re* Fairchild Aircraft Corp., 184 B.R. 910, 917–18 (Bank. W.D. Tex. 1995); *In re* White Motor Credit Corp., 75 B.R. 944 (Bankr. N.D. Ohio 1987); *In re* New England Fish Co., 19 B.R. 323 (Bankr. W.D. Wash. 1982).
[166] *See generally In re* Millenium Seacarriers, Inc., 419 F.3d 83 (2d. Cir. 2005).

claims. This restriction would ensure the effectiveness of bankruptcy courts and that discharge of maritime liens would remain within the exclusive purview of federal district courts.

Another potential solution to the question of whether a maritime lien can be enforced separately between a debtor in bankruptcy and a creditor or lienholder is for courts to interpret the exception under §524(j)(2) of the Bankruptcy Code to apply to preferred mortgage lienholders. Section §524(j)(2) provides that the discharge injunction does not apply to creditors pursuing secured claims, provided the actions are taken in the ordinary course of business between the parties.[167] The foreclosure of a first-priority ship mortgage is a critical and necessary component of investing in maritime ventures. Accordingly, a court could reasonably interpret the arrest and foreclosure of a maritime lien as part of the ordinary course of business dealings between vessel owners and financial investors who hold secured first-priority ship mortgages. This interpretation would permit creditors or lienors to initiate *in rem* proceedings against the vessel even after the debtor has received a bankruptcy discharge. Such a reading would preserve the integrity of the balance between admiralty and bankruptcy courts, ensuring that neither is rendered ineffective in effectuating their primary goal. While the primary objective of the bankruptcy court is to provide the debtor with a fresh start, permitting post-discharge foreclosure actions against the vessel would not undermine this goal. Once the vessel has been sold, it is no longer part of the debtor's estate, and the debtor's pecuniary interests are no longer at risk.

VI. CONCLUSION

The fog that has fallen over the intersection of bankruptcy and admiralty remains thick. The tension between the two specialized legal disciplines is not only difficult to conceptualize but also presents significant challenges in formulating viable solutions, given the complexity and multitude of issues inherent in their overlap. Nevertheless, in light of the heightened stakes, the statutory framework governing both maritime liens and bankruptcy law, and the potential for substantial economic confusion and harm, it must be acknowledged that *Millenium* and *Wellness* are unsatisfactory precedents and should be overruled. Accordingly, the equitable rationale adopted in *Millenium* should be expressly rejected to facilitate a more coherent and harmonious coexistence between admiralty and bankruptcy courts.

[167] 11 U.S.C. § 524(j)(2).