

SEAFARER SUBJECT GUIDE

MARITIME LIEN FOR SEAFARERS' WAGES IN LIBERIA

This Guide deals with the rights of seafarers of any nationality to unpaid or underpaid wages in respect of Liberian flagged ships, and foreign ships which are in the ports of Liberia. These rights can be enforced in Circuit Courts sitting in admiralty, where they are secured and preferred by maritime liens and enforced by the arrest and forced (judicial) sale of the ships.

This document is not intended to be legal advice, nor does it constitute legal advice.

If a seafarer intends to claim his wages, he is strongly advised to consult a lawyer qualified to practise in Liberia.

*A full text version of this Subject Guide including footnotes will become available for subscription in due course. In the meantime if there is a specific inquiry on any Subject Guide, please contact SRI.

1. What is the maritime lien for seafarers' wages? How is it enforced?

- 1.1 The maritime lien for seafarers' wages is designed to improve the prospects of claims for wages being paid. This maritime lien is recognized under the Liberian Maritime Law. This lien automatically arises by operation of law and it comes into existence without the seafarer having to take any action as soon as the seafarer renders service to the ship and as soon as wages are due and not paid on time. Unless there is an agreement to the contrary, the wages of the seafarer must be paid within two days of termination of the shipping articles or at the time the seafarer is discharged, whichever is sooner. In most situations, the shipowner agrees to pay wages monthly or every two months. Whenever there is a claim for wages, there is a maritime lien so that the right to wages and the right to a maritime lien are co-existent.
- 1.2 The Liberian Maritime Law also adopts the 'non-statutory General Maritime Law of the United States of America ('the USA') insofar as it is not in conflict with any provisions of Liberian maritime law.' Thus, as in the USA, the lien is created by the operation of law because that is the General Maritime Law of the USA. A maritime lien for wages arises when seafarers working aboard a vessel go unpaid, or are underpaid, and the lien attaches to the vessel for the amount of wages owed to him.
- 1.3 Liberian maritime law recognizes that all causes of action are 'cognizable' before the circuit courts of Liberia, sitting in admiralty, but further provides that courts of other countries can enforce causes of action created under the Liberian Maritime Law. As such, Liberian law is primarily enforced by foreign courts with working judicial systems

SEAFARER SUBJECT GUIDE

and not the judicial system of Liberia. An action *in rem* may be brought to enforce the maritime liens for seafarers' wages. The action *in rem* is commenced by arresting the particular ship (and not any other ship) and proceeding against the ship. The maritime lien secures the claim for wages by attaching to the ship, its tackle, apparel, furniture or any remaining part of a shipwreck; and travels with the ship into the possession, control or ownership of a third party even if the ship is sold for value to a third party who neither employed the seafarers nor was aware of their maritime lien. The maritime lien also attaches to the freight when the freight has not been paid to the shipowner or master and the seafarers have an enforceable lien on the cargo for the unearned freight due on it.

- 1.4 As the claim advances through the court, it can end in the forced sale of the ship in order to satisfy the claim for unpaid wages. The claim for unpaid wages and the maritime lien is accorded a preferred status, so that the claim enjoys a very high ranking and is therefore paid before many other claims against the ship.

2. Which courts have jurisdiction over seafarers' wage claims?

- 2.1 The modern shipping industry is a worldwide enterprise that often implicates the interest of several countries. Any court that can obtain jurisdiction over the vessel owner may exercise *in personam* jurisdiction and any court that can obtain jurisdiction over the defendant's property may bring an *in rem* action to enforce the seafarer's claim for wages.
- 2.2 The jurisdictional issue must be resolved first. Any claim by a master or member of the crew for wages must be brought in a court in which jurisdiction may be obtained over the owner of the vessel for an *in personam* action or over the vessel for an *in rem* action. However, an *in personam* action in either a state or federal court will only result in the obtaining of an *in personam* judgment and it is not secured by a maritime lien on the vessel. Any claim by a master or member of the crew to enforce a maritime lien for unpaid or underpaid wages must be brought on the admiralty side of federal court, known as a USA District Court. This is the only court that can enforce a maritime lien in the USA. Because the lien is enforced by the arrest of the vessel, the action will be brought in the USA District Court in which the vessel is located.

3. Can the courts refuse to hear seafarers' claims for wages?

- 3.1 A court may or may not be able to refuse to hear a seafarer's claim for wages, depending upon the rules of the particular country. In the USA, a federal court sitting in admiralty is subject to its own rules or procedure and statutes. The wage statute, 46 U.S.C. §10313 is applicable to both USA flagged vessels and to foreign flagged

SEAFARER SUBJECT GUIDE

vessels. The doctrine of *forum non conveniens* has been held to be specifically not applicable to wage claims brought under this section.

4. Who can claim seafarers' wages?

- 4.1 The proper party plaintiff to claim unpaid or underpaid wages is the seafarer. Also, the master of a Liberian flagged vessel enjoys the same rights as the seamen and has the same liens upon the vessel regarding wages, except as otherwise provided.

5. Which ships are subject to the jurisdiction of the courts?

- 5.1 Jurisdiction under Liberian law with respect to seafarers' wages covers Liberian-flagged vessels.
- 5.2 A vessel of 20 net tons or more, owned by a citizen or national of Liberia and engaged solely in the coast-wide trades between ports of Liberia, is eligible for documentation under Liberian law.
- 5.3 Any seagoing vessel of more than 1600 net tons and engaged in foreign trade, wherever built and owned by a citizen or national of any country is eligible for documentation under Liberian law. A yacht or other vessel used exclusively for pleasure of 100 net tons or over owned by a citizen or national of Liberia, is eligible for documentation under Liberian law.

6. What is included in the maritime lien for seafarers' wages?

- 6.1 Wages commence on the date given in the contract, or at the start of the seafarer's work aboard the ship, whichever occurs first. The normal hours of work at sea or in port are eight hours per day. Any work done in excess of those eight hours must be considered overtime, for which the seafarer must be paid overtime rates, except in certain emergency situations as agreed. The master is required to pay one half of the seafarer's earned wages when demanded at any port in which the ship loads or unloads cargo before the end of the voyage. The seafarer may demand this payment only once every ten days. If the master wrongfully does not pay on demand, the seafarer maintains the right to be paid his full-earned wages.
- 6.2 The seafarer must be paid at the times specified in their contract. If no term is specified, the seafarer must be paid within two days after the termination of his contract, or at the time when he is discharged, whichever occurs first. Wages end on the date specified in the contract or when the seafarer is discharged. If the voyage is extended beyond the term specified in the contract, the seafarer will continue to be

SEAFARER SUBJECT GUIDE

paid until the actual end of the voyage. If the voyage is cut short, then the seafarer must be paid until the new end of the voyage.

- 6.3 If the contract ends due to a change of flag, change of ownership, abandonment of vessel, or loss of the vessel, the seafarer has the right to fifteen days base wages, or base wages until the end of his contract, whichever is the lesser.
- 6.4 The seafarer will not be paid if he works as a seafarer on another vessel during this period or if he refuses similar work at sea. If the seafarer is discharged, through no fault of his own, prior to the start of the voyage or prior to earning one month's wages, the seafarer has the right to receive wages for his service on the vessel in addition to one month's wages.
- 6.5 The seafarer's right to wages does not depend upon the earning of freight by the vessel. After twelve months of continuous work for an employer, the seafarer has the right to vacation pay. As for the master and officers, the annual allowance must not be less than twelve days base wages. As for other crew members, the vacation pay must not be less than eight days base wages a year. Lastly, every seafarer on a Liberian flagged ship has the right to a minimum of five paid holidays a year.

7. Can seafarers' wages be claimed if there is no written contract of employment?

- 7.1 Wages may be claimed if there is no written contract of employment, since wages commence on the date that the work was started even if there is no written contract.
- 7.2 Under the Liberian Maritime Law, every seafarer on board a Liberian flag vessel, except apprentices and servants, weighing 75 tons or more must sign an agreement with the master of the vessel. This agreement is referred to as 'shipping articles' and serves as a contract. Because this is mandatory under the Liberian Maritime Law, the vessel owner may be faced with serious penalties if the seafarer is employed without the execution of the shipping articles. The shipping articles include, but are not limited to, a description of the voyage, when wages are to begin, base wage per month, days of paid leave, and the minimum days of paid holidays per year. Wages commence on the date specified in the contract or the date that the work was started, whichever occurred first. Overtime rates are due for any work that is done after eight hours in one day with the exception of emergency situations. A copy of the shipping articles must be visibly posted on the vessel, though it is not required that a copy be distributed to the seafarer. If the contract was violated, Liberia requires that the complaint must be made within one year.

SEAFARER SUBJECT GUIDE

7.3 Section 355 of the Liberian Maritime Law authorizes the use of collective bargaining agreements. Employers and employees, or seafarers, may bargain collectively to establish the overtime rates, provided that the provisions in such a contract are not prohibited by Liberian laws or regulations.

8. Must seafarers' services have been rendered on board the ship?

8.1 Wages commence on the day specified and agreed to in the contract or at the time the seafarer began work aboard the vessel, whichever occurs first. Therefore, actual service need not be rendered for a seafarer to be entitled to wages. Under section 327 (1), entitlement to wages commences on the date stated in the contract or the start date of work aboard the ship, whichever occurs first.

8.2 Section 291 provides the definition for 'seamen' relevant to the chapter. Under that section, a 'seaman' refers to 'any or all members of the crew and officers other than the master and pilots, employed or engaged in any capacity on board any vessel.'

9. What is the ranking of seafarers' claims for wages in the event that sale proceeds are distributed?

9.1 The sale of a vessel in an *in rem* proceeding generates a fund in the registry of an admiralty court. When this fund is insufficient to satisfy all of the claims against the vessel, the ranking of claims for wages is of great importance. The Liberian Maritime Law provides that liens for wages and salvage have priority over all others; 'Liens for crew wages are paramount to all other claims.' Generally, when the proceeds of the sale are to be distributed, the highest-ranking lien categories, such as a maritime lien for the crew's wages, are the first to be paid.

10. Can wages be claimed if the employer is not the shipowner or acts illegally?

10.1 The seafarer cannot lose his right to place a lien on the ship for recovery of wages nor can he give up any salvage rights.

11. Can the seafarer's maritime lien be abandoned or waived by agreement?

11.1 The seafarer has the right to a maritime lien against the vessel for any wages owed him under this section. The seafarer cannot lose his right to place a lien on the ship for recovery of wages nor can he give up any salvage rights. Also, under Regulation 10.320, the signing-off of shipping articles by a seaman at the time of his discharge from employment on board does not constitute a waiver on his part of any claims he may have against the vessel or its master at that time.

SEAFARER SUBJECT GUIDE

12. When is the seafarer's maritime lien for wages forfeited or not recognised or extinguished?

- 12.1 Pursuant to section 330, a seafarer forfeits his maritime lien for wages when he unjustifiably fails to report on board at specified dates or times; when he is incompetent to perform duties for which he represented to be qualified; when he commits theft, embezzlement or wilful destruction of any part of the vessel, its cargo or stores; when he commits serious insubordination or wilful disobedience or wilful refusal to perform assigned duties; when he deserts the ship; when he is habitually intoxicated or quarrelsome; when he is in possession of dangerous weapons, narcotics or contraband articles; when he intentionally conceals a sickness or injury prior to engagement under the shipping articles; when he assists stowaways; and when he wilfully commits local crimes.
- 12.2 The maritime lien for wages is extinguished by the payment of the wages or by laches. The equity doctrine of laches bars a claim by those who 'sleep on their rights.' A maritime lien can be extinguished, in applying the doctrine of laches, when there is a showing of prejudicial harm and inexcusable delay.
- 12.3 When applying procedural rules, the forum, the USA District Court, uses its own law, not the law of the foreign jurisdiction, to determine whether a foreign limitations statute bars the right and not merely the remedy.