

SEAFARER SUBJECT GUIDE

MARITIME LIEN FOR SEAFARERS' WAGES IN ENGLAND AND WALES

This Guide deals with the rights of seafarers of any nationality to claim a maritime lien for unpaid or underpaid wages in respect of United Kingdom flagged ships, and foreign ships which are in the ports of England and Wales. These rights can be enforced in the Admiralty Court, 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 England and Wales.

*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 In England Wales the term 'maritime lien' applies only to a select group of maritime claims, being seafarers' wages, masters' wages, masters' disbursements, salvage, damage (caused by the ship), bottomry and respondentia. Other maritime claims exist, such as services supplied to the ship (for example, bunkers, supplies, repairs, and towage), as well as claims for cargo damage, for breaches of charterparty and for contributions of the ship in general average. However these maritime claims do not give rise to maritime liens but only to 'statutory rights *in rem*,' which are rights granted by statute to arrest a ship in an action *in rem* for a maritime claim.
- 1.2 The maritime lien for seafarers' wages arises automatically by operation of law (not by contract) and springs into existence without the seafarers having to take any action as soon as they render service to the ship and the wages are due and unpaid. 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. The lien is designed to improve the prospects of claims for wages being paid.
- 1.3 The maritime lien is enforced by arresting the particular ship (and not any other ship) and proceeding against the ship. This is known as an action *in rem*. The maritime lien secures the claim for wages by attaching to the ship (like a mollusc to the hull), its tackle, apparel and 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 the third party who neither employed the seafarers nor was aware of

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their maritime lien. The maritime lien also attaches to the freight, but not generally to the cargo.

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

- 2.1 Any claim by a master or member of a crew for wages must be brought in the Admiralty Court which is situated in London. All claims in the Admiralty Court are 'multi-track claims,' which means that they may be case managed by the judge in order to ensure that they are run efficiently.
- 2.2 Alternatively, in relation to United Kingdom flagged vessels, any dispute relating to the amount payable to a seafarer employed under a crew agreement may be submitted by the parties to a superintendent or proper officer for decision. The superintendent or proper officer is not obliged to accept the submission or to decide the dispute. If he does so, then his decision is final. However, provision is not made for the superintendent or proper officer to charge a fee for his services. Further, the superintendent or proper officer does not have any powers to enforce his decision relating to the amount payable to a seafarer employed under a crew agreement.

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

- 3.1 The Admiralty Court can hear and determine any maritime claim for wages regardless of where the claim arose, whatever the nationality of the ship, and whatever the nationality, residence or domicile of the owner or the seafarer.
- 3.2 However, the Admiralty Court may refuse to hear a seafarer's claim for wages by staying the proceedings if the shipowner can show that there is another court which is a more appropriate court for the trial. In response, the seafarer can seek to show that the circumstances require that the stay be refused in the interests of justice.
- 3.3 The maritime lien, the right to arrest the ship, and the high ranking enjoyed by seafarers in the Admiralty Court are regarded as legitimate juridical advantages and connecting factors in favour of the Admiralty Court exercising its jurisdiction. Therefore, it is unlikely that shipowners could persuade the Admiralty Court on a balance of probability to decline to exercise its jurisdiction over claims for wages.

4. Who can claim seafarers' wages?

- 4.1 According to the Senior Courts Act 1981, the Admiralty Court has jurisdiction to hear and determine 'questions and claims' in respect of 'any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages.'

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- 4.2 However, if a third party pays the seafarer's wages (with the leave of the Admiralty Court and provided that the payment is made directly to the Admiralty Marshall who in turn, pays the seafarers their wages), then that person may be subrogated to the seafarer's claim for wages. The Admiralty Marshall reimburses the person who paid the wages out of the proceeds of sale of the ship who has the same priority as the seafarers would have had.
- 4.3 In relation to United Kingdom flagged ships, if the claim is made under the crew agreement, then the claim must relate to a 'seaman,' which is defined in the Merchant Shipping Act to include 'every person (except masters and pilots) employed or engaged in any capacity on board any ship.' If the seaman has allotted any part of his wages, then that person has the right to recover those allotted wages in his own name and for that purpose has the same remedies - including a maritime lien - as the seafarer has for the recovery of his wages. The person so allotted is presumed, unless the contrary is shown, to be entitled to the wages of the seafarer.

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

- 5.1 The jurisdiction of the Admiralty Court in respect of claims for seafarers' wages covers both United Kingdom ships and non-United Kingdom ships.
- 5.2 A seafarer can only sue for wages if he works on a 'ship,' which is defined in the Merchant Shipping Act to include 'every description of vessel used in navigation.'

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

- 6.1 The Admiralty Court has traditionally been 'peculiarly tender and benevolent' towards seafarers since they are perceived to be in need of protection. Adopting a protective attitude towards seafarers, the Admiralty Court gives seafarers the benefit of a doubt in the construction of their employment agreements, doing what is fair and just in order to secure for the seaman what he has earned by service to and in the ship, while also keeping up to date and having regard to the changing conditions of the employment of seafarers.
- 6.2 Wages is not confined to a bare sum of money and are not evaluated on the basis of a *quantum meruit*. As a result, the maritime lien for wages has been widely - but not endlessly - extended to include: 'emoluments,' which are not regular payments that cover bonuses or gratuities obtained in the course of service; deductions for health insurance; notice of termination of service, paid leave, sick leave; social benefits in the nature of national health insurance contributions; a seafarer's pension and provident fund contributions, a shipowner's pension fund contributions, income tax

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deductions, stamp duties, and trade union dues; damages for wrongful dismissal; and repatriation costs.

- 6.3 However, not every payment made by the shipowner to a seafarer under the seafarer's contract of employment is necessarily a payment of 'wages,' secured and preferred by a maritime lien. The maritime lien most probably does not extend to wages for study leave ashore, whether before or after the seafarer's service on the ship, or to wages for previous service in a ship in different ownership managed by the same manager as the ship in question, or for service while in a group pool of officers.
- 6.4 Nor does the maritime lien extend to severance pay (which is a lump sum payable to a seafarer who is surplus to the requirements of the shipowner) since it is said not to be paid as extra remuneration, or as deferred remuneration, or as remuneration for the services of seafarers to the ship; instead, it is regarded as compensation for the loss of employment or termination of service in relation to the employer, albeit in relation to the aggregate length of service the seafarer renders to the companies which own the ships to which seafarers render their services.
- 6.5 But it is arguable that the Admiralty Court might be persuaded to regard severance pay as a part of the wages if the seafarer is surplus to the requirements of the ship (as opposed to being surplus to the requirements of the overarching employment with the shipowner), and if the seafarer has served the particular ship for sufficient duration to justify severance pay.

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

- 7.1 The contracts of employment of seafarers on United Kingdom ships must be written and of an approved kind. If a ship goes to sea in contravention of this requirement, the master or the person employing the seafarer shall be liable to criminal conviction.
- 7.2 There may also be collective agreements incorporated into individual agreements and the relationship between such contracts may be complex and complicated. But neither contractual complexity nor contractual complications - or even the absence of contracts - deprive seafarers of their right to wages and to the co-extensive maritime lien, provided they render services to the ship.
- 7.3 The law thus provides seafarers with the advantage of a maritime lien for wages, even if seafarers and shipowners did not enter into a contract, since the right to be paid arises independently of the personal liability of the employer, whether, for

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example, a shipowner, demise charterer or other charterer, manager or operator of the ship.

- 7.4 The maritime lien for wages is thus an absolute lien in that there is no need for the shipowner to be liable for the wages or for the shipowner to be vicariously at fault.
- 7.5 Although a seafarer's contract is not, therefore, essential to the existence of the maritime lien for wages it does, however, provide written evidence of the amount of the wages.

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

- 8.1 Seafarers are entitled to wages and to a co-extensive maritime lien if they render the services appropriate to their rank as part of the crew of the ship. They need not always necessarily render the service in or on board the ship, or live on board the ship.
- 8.2 But the service must refer to the ship, and the service must be rendered during a period when the seafarers can be said to be part of the crew of the ship.
- 8.3 Seafarers can, therefore, earn wages while, for example, on shore leave, or waiting in a hotel for their ship, during sick leave, and during vacation.

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

- 9.1 When the ship is sold, all the maritime claims against the ship are ranked in order of priority with the objective of being paid. The ranking of claims (for United Kingdom and foreign flagged ships) is considered a matter of procedure and therefore is also determined in accordance with English law as the *lex fori* (that is to say, the law of the place of the court). There is a *prima facie* ranking of claims from which the Admiralty Court may, in the exercise of its equitable discretion, depart. It is, however, rare in practice for a departure from the well settled rankings to occur.
- 9.2 The charges of the Admiralty Marshall are ranked first and will therefore be paid first. The costs of the party who arrested the ship and thereby produced the fund established by the proceeds of the forced sale of the ship are ranked second and paid next.
- 9.3 Thereafter, maritime liens have priority over all other claims, including a mortgage of the ship. Within the category of maritime liens, as a general rule, the maritime lien for salvage will rank first, followed by the maritime lien for wages. The maritime lien for

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a seafarer's wages will therefore outrank the maritime lien for damage done by a ship. The maritime lien for the wages of a master is ranked equally with the maritime lien for the wages of all other crew members.

- 9.4 If a claim for wages is enforced by an action *in personam* or an action *in rem* against a sister ship, it is not ranked as a maritime lien and will be accorded a priority below that of a mortgage.

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

- 10.1 Given the strict liability for the creation of the seafarers' maritime lien, seafarers enjoy the advantage that the maritime lien comes into existence even where: the employer of the seafarer is not the owner of the ship; or the employer is in unlawful possession of the ship; or the employer has fraudulently obtained possession of the ship; or the employer has mere possession of the ship but not ownership of the ship. In these cases, there is a maritime lien against the ship, even though the seafarer has no claim against the shipowner.
- 10.2 Even where the master and mate use the ship to commit a crime, a seafarer has the right to his unpaid wages as well as a reasonable and proper amount for compensation for the damages he may have suffered due to the acts of the master and mate.
- 10.3 However, a seafarer is only entitled to a maritime lien, provided he is not guilty of illegality or otherwise blameworthy such as, being privy to a fraud on the shipowner or complicit in stealing the ship; or knowing that he is not entitled to board the vessel to carry out the work or to act in the capacity of a particular rank on board.

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

- 11.1 A seafarer enjoys the protection of the Legislature given his unequal bargaining position vis-à-vis the shipowner. So, it is enacted that a seafarer on a sea-going ship cannot by agreement renounce his maritime lien and remedies for the recovery of his wages. Therefore, every stipulation in any agreement with a seafarer which is inconsistent with this legislation is void and of no force or effect.
- 11.2 Furthermore, seafarers of any nationality on a foreign ship cannot by agreement renounce their claims to wages, their maritime liens, or any remedy for the recovery of their wages.

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

- 12.1 There is no right to wages and to a maritime lien if the shipowner can show that: the seafarer wilfully deserted the ship without the intention to return; the seafarer was absent without leave (part of the wages would be forfeited but not the maritime lien); the seafarer was guilty of gross misconduct or incompetency on the part of the seafarer; the employment agreement, through no fault of either the seafarer or the shipowner, has been frustrated (no wages are payable from the time of the frustration).
- 12.2 If a seafarer has a claim for wages that arises under a foreign law, the Admiralty Court will apply the *lex fori* (that is, the law of the local court, in effect, English law) to the recognition of that claim. Therefore, only the maritime liens that arise for seafarers' wages under English law (as set out herein) will be recognized and enforced by an action *in rem*, and accorded the ranking set out herein.
- 12.3 The maritime lien for wages is extinguished by the payment of the wages; the physical loss of the ship, which must be total and irretrievable (the maritime lien for wages may, for example, can be enforced against any part of the ship that remains as a shipwreck); or laches, which is an unreasonable delay in asserting the right that results in inequity to the shipowner.