

SEAFARER SUBJECT GUIDE

MARITIME LIEN FOR SEAFARERS' WAGES IN MARSHALL ISLANDS

This Guide deals with the rights of seafarers of any nationality to unpaid or underpaid wages in respect of Marshall Islands flagged ships, and foreign ships which are in the ports of the Marshall Islands. These rights can be enforced in the High 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 the Marshall Islands.

*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 may not be forfeited by any agreement, nor can the seafarer be deprived of any remedy for the recovery of his wages. 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.
- 1.2 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.
- 1.3 The laws of the Marshall Islands also adopt 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 the Marshall Islands' 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.

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- 1.4 A maritime lien may be enforced in the Marshall Islands by a suit *in rem* in admiralty in the High Court. The maritime lien may also be enforced or in any foreign country in which the vessel can be located in accordance with the enforcement procedures of that country. As such, the law of the Marshall Islands is primarily enforced by foreign courts with working judicial systems and not the judicial system of the Marshall Islands, where the vessel is seldom found. An action *in rem* may be brought to enforce the maritime liens for seafarers' wages in the USA. 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.
- 1.5 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 High Court of the Marshall Islands has jurisdiction to determine seafarers' claims for wages, but specifically reserves the right of foreign courts to hear those cases. To bring an *in rem* action, the vessel must be located within the jurisdiction of the Marshall Islands. An *in personam* action may be brought in the High Court of the Marshall Islands provided the defendant has his 'habitual residence or place of business' within the Marshall Islands or because the action arose in the territorial waters of the Marshall Islands.
- 2.3 If the claim is brought in the USA, any claim by a master or member of the crew to enforce a maritime lien for unpaid or under-paid wages must be brought on the admiralty side of a USA District (or Federal) Court, which is the only court which can

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enforce a maritime lien. 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 The courts may refuse to hear a seafarer's claim for wages. The Marshall Islands recognizes the doctrine of *forum non conveniens* and may transfer a case to a tribunal that it deems more convenient. Courts in other countries 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 vessels. The doctrine of *forum non conveniens* has been held to be specifically not applicable to wage claims brought under this section.
- 3.2 Also, the Revised Code of the Marshall Islands law provides that the High Court has the right to refuse to entertain an action for wages for any vessel that does not fly the flag of the Marshall Islands.

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 Marshall Islands 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 The jurisdiction under the law of the Marshall Islands with respect to seafarers' wages covers Marshall Islands flagged vessels.
- 5.2 Any seagoing vessel owned by a citizen or national of the Marshall Islands or a qualified foreign maritime entity and engaged in foreign trade may be registered, regardless of where the vessel was built. The Marshall Islands Maritime Act prohibits the registration of vessels over 20 years of age, but this limitation may be waived by the Maritime Administrator.

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

- 6.1 Under the Merchant Seafarers Act, wages commence on the day specified and agreed to in the shipping articles or at the time the seafarer is present aboard the vessel for work purposes, whichever occurs first. Wages end on the day of discharge or

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termination of the articles. If there is no agreement to the contrary, the shipowner or the master of the vessel must pay due wages to every seafarer within two days after the termination of the articles, or at the time when the seafarer is discharged, whichever is first. In case of wrongful failure to pay a seafarer wages on demand, the seafarer becomes entitled to a payment of full wages earned. If a seafarer, who has signed shipping articles, is discharged before the voyage or before one month's wages are earned, by no fault of his own and without his consent, he is entitled to receive in addition to his earned wages a sum equal in amount to one month's wages as compensation.

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

- 7.1 As previously noted, the Marshall Islands adopts the General Maritime Law of the USA. The General Maritime Law of the USA recognizes oral contracts of employment of seafarers and therefore wages may be claimed in the Marshall Islands if there is no written contract of employment.
- 7.2 As per the Merchant Seafarers Act, shipping articles are required to be executed. The shipping articles must be in force with every seafarer on board his vessel, except with persons who are apprenticed to, or servants of, himself or the vessel's owner, before the vessel sails away or leaves the port. The shipping articles must be written or printed and must be subscribed by every seafarer. The articles must 'state the period of engagement or voyage or voyages and the term or terms for which each seafarer shall be shipped, and the rate of pay for each, and such other items as may be required by Regulation.'
- 7.3 There are penalties for fraudulently altering the articles as well as shipment without shipping articles. The Merchant Seafarers Act provides the penalty for shipment without shipping articles. When a vessel makes a voyage, carrying officers or crew, without entering into shipping articles with the master of the vessel, the vessel will be penalized. The vessel will not be penalized, however, for those who have secretly stowed away on the vessel or have made false representations to the master for the purpose of being carried to sea.
- 7.4 Collective Bargaining Agreements ('CBA') are authorized under the Merchant Seafarers Act. Seafarers may bargain collectively with their employers and enter into a labour contract concerning wages and other terms and conditions of employment. A copy of this agreement, or any other similar labour contract, must be on board the vessel and be available upon request. The terms agreed to in the CBA are binding unless otherwise prohibited by law. The Merchant Seafarers Act expressly prohibits certain

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provisions and states that the provisions are to be considered null and void. Those prohibited provisions include less favourable terms or conditions of employment than those prescribed by law. Also, provisions that discriminate as to terms and conditions of employment on the basis of race, colour, gender or creed are prohibited.

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

8.1 Services need not be rendered on board the ship. Under the Merchant Seafarers Act, wages commence on the day specified and agreed to in the shipping articles or at the time the seafarer is present aboard the vessel for work purposes, whichever occurs first. Therefore, actual service need not be rendered for a seafarer to be entitled to wages. Rather, the seafarer is entitled to wages beginning on the date of the term specified in the articles or he must be aboard the vessel for the purpose of work.

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. Under the Merchant Seafarers Act, the preferred mortgage lien has priority over all claims against the vessel, except maritime liens for crew's wages, for general average, and for salvage (including contract salvage) and expenses and fees allowed and costs taxed by the court. 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 Under the Merchant Seafarers Act, whoever furnishes repairs, supplies, towage, use of dry dock or marine railway, or other necessaries, to any foreign or domestic vessel upon the order of the owner or person authorized by the owner, has a maritime lien on the vessel. However, a person tortuously or unlawfully in possession or charge of the vessel shall not have authority to bind it.

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

11.1 Under the Merchant Seafarers Act, a seafarer cannot forfeit nor waive his lien upon the ship or be deprived of a remedy for recovery of his wages to which he would have otherwise been entitled. Every stipulation by which any seafarer consents to abandon his right to his wages in the case of the loss of the ship or to abandon any right,

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which he may have obtained in the nature of salvage, shall be wholly void and inoperative. Thus, a seafarer cannot abandon nor waive his lien for wages by agreement since such an agreement would be wholly void and inoperative.

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

- 12.1 Under the Merchant Seafarers Act, 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; or 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. In applying procedural rules, 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.