

SEAFARER SUBJECT GUIDE

MARITIME LIEN FOR SEAFARERS' WAGES IN PANAMA

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

*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 law confers a maritime lien not only for wages but also for remuneration and compensation and grants a high priority in the order of payment for the different types of liens from the proceeds of the sale of the vessel.
- 1.2 Law 55 of 6 August 2008 on Maritime Commerce has qualified maritime liens with regard to the vessel and the freight.
- 1.3 A maritime lien attaching to the vessel is extinguished upon the judicial sale thereof. For this maritime lien the statute of limitation (prescription) is one year.
- 1.4 A vessel sold extra-judicially (by private sale) is transferred to the buyer subject to all maritime liens thereon. Such maritime liens attaching to a vessel expire after six months from the date of registration of the transfer of title at the Public Registry.
- 1.5 The provisions of the preceding paragraph are, however, not applicable to ship mortgages.
- 1.6 The maritime lien does not extinguish in respect of a creditor with priority, who before the expiration of the term provided in the preceding paragraph, institutes proceedings to enforce the lien.
- 1.7 The privilege provided by the maritime lien for seafarers' wages does not apply to cargo.

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

- 2.1 Since 1982, courts with maritime jurisdiction decide matters occurring in Panama or abroad, onboard Panamanian or foreign vessels, and arising out of traffic, trade and maritime transportation. The Maritime Courts and the Appeal Court in Maritime Affairs, which is the Civil Branch of the Supreme Court of Justice, have made Panama a recognized international judicial dispute solving country, as well as a claim securing and execution forum. This is also due to vessel transits through the Panama Canal.
- 2.2 The jurisdiction of the Panamanian Court extends to all maritime cases.

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

- 3.1 The Maritime Courts cannot refuse to hear a claim for wages. The Maritime Courts of were conceived from the beginning as a tribunal for the international administration of justice.
- 3.2 Maritime Courts have exclusive jurisdiction over cases arising out of maritime commerce, transportation and trade occurring within the territory of Panama, its territorial and navigable waters, rivers, lakes and in the waters of the Panama Canal.
- 3.3 These cases include claims arising out of transit from, towards or through Panama. Cases involving the Panama Canal Authority are subject to its Organic Law.
- 3.4 The Maritime Courts also have exclusive jurisdiction to try lawsuits derived from acts referred to in the above paragraph but occurring outside the scope of the prior paragraph, in the following instances:
 - (1) when lawsuits are directed against the vessel or its owner and the vessel is seized within the jurisdiction of Panama as a result of the lawsuits;
 - (2) when the Maritime Court has seized other property belonging to the defendant, although not domiciled within the territory of Panama;
 - (3) when the defendant is within the jurisdiction of Panama and has been personally served with any lawsuits filed in the Maritime Courts; or
 - (4) when the vessel or one of the vessels involved is a Panamanian flagged ship, or Panamanian substantive law is applicable by virtue of the contract or by operation of Panamanian law, or the parties expressly or tacitly agree to submit themselves to the jurisdiction of the Maritime Courts of Panama.
- 3.5 Pursuant to the provisions of the National Constitution, lawsuits arising from the provisions of the Labour Code are within the exclusive jurisdiction of Panamanian Labour Courts. However, civil lawsuits claiming compensation for damages are within

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the jurisdiction of the Maritime Courts when they occur as a result of a work accident caused by deceit, fault or negligence on the part of the employer or a third party.

- 3.6 The Maritime Courts may, upon request of a party, refrain from trying or continuing to try a proceeding on cases that originated outside Panama, if:
- (1) the testimony of witnesses residing abroad is necessary and collecting the evidence abroad or the appearance of witnesses before the court is too onerous for any of the parties;
 - (2) a judicial inspection with the presence of the court officers is necessary in order to get a better assessment of the witnesses and proceedings must take place abroad;
 - (3) the parties have negotiated, previously and expressly, to submit their disputes to arbitration or to a court in a foreign country, and they have agreed to this in writing (pro forma contracts or adhesion contracts are not considered to be previously and expressly negotiated); or
 - (4) the dispute has been submitted to arbitration or to the jurisdiction of a court in a foreign country and a decision is still pending in such action.

4. Who can claim seafarers' wages?

- 4.1 The seafarer and his heirs can claim wages in the courts through a lawyer admitted to practise in Panama.

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

- 5.1 The presence of any vessel in Panamanian waters gives the Maritime Court jurisdiction *in rem* over the vessel and *in personam* over the owners, operators and charterers. In addition, the Maritime Courts have jurisdiction over Panamanian registered vessels and their owners, operators and charterers.

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

- 6.1 The law confers a maritime lien for wages, remuneration and compensation, in other words, the maritime lien attaches not only to the monthly salary, but also to overtime and any other remuneration to which the seafarer is entitled.

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

- 7.1 Under labour law, the general principle is that it is not mandatory to have a written contract, but highly recommended. The terms of employment can be drawn from the

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payment records and crew roles, and the crew can be listed from the dispatching or ship arrival documents.

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

8.1 Only a seafarer's service on board the vessel qualifies for the maritime lien. Port captains and other land based staff, although sometimes working onboard, do not qualify for the maritime lien.

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

9.1 Law 55 of 6 August 2008 on Maritime Commerce provides for qualified maritime liens with regard to the vessel and the freight.

9.2 These liens are ranked according to their source and are set out as follows:

- (1) court costs incurred in the common interests of all maritime creditors;
- (2) expenses, compensation and wages, for any assistance and salvage due for the last voyage;
- (3) wages, remuneration and compensation owed to the master and crew for the last voyage;
- (4) ship mortgages;
- (5) debts owed to the Panamanian government for rates and taxes;
- (6) salaries and wages due to stevedores and dock workers hired directly by the owner, operator, or master of the vessel, for loading or discharge upon its last arrival at port;
- (7) any compensation payable for damages due to fault or negligence;
- (8) amounts due for general average contributions;
- (9) debts incurred in procuring the vessels' necessaries and provisions;
- (10) bottomry loans for the ship's hull, rigging, stores, equipment and outfit, if the contract was entered into and signed before the vessel left the port in which the obligations were undertaken, together with insurance premiums for the last six months;
- (11) wages of pilots, watchmen, and the cost of the ship's maintenance and custody, rigging and stores, after its last voyage and entry into port;
- (12) compensation payable to shippers and passengers for failure to deliver cargo or for damage thereto sustained on the last voyage and attributable to the master or crew; and
- (13) the price obtained for the ship's last sale and any interest owed for the last two years.

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- 9.3 The following liens take priority over the freight and attach to the proceeds of sale thereof in the following order:
- (1) court costs incurred in the common interests of all maritime creditors;
 - (2) expenses, compensation and wages, for any assistance and salvage due for the last voyage;
 - (3) wages, remuneration and compensation owed to the master and crew in respect of the voyage on which the freight was earned;
 - (4) amounts due for general average contributions;
 - (5) bottomry loan for the ship's accrued freight;
 - (6) insurance premiums;
 - (7) principal or interest due by virtue of the master's obligations in respect of the freight, subject to any legal formalities;
 - (8) damages payable to shippers and passengers for failure to deliver cargo or for damage thereto, sustained on the last voyage and attributable to the master or crew; and
 - (9) any other debt secured by a duly registered bottomry loan, ship mortgage or lien attaching to the freight.
- 10. Can wages be claimed if the employer is not the shipowner or acts illegally?**
- 10.1 The maritime lien is perfected by the work done by the seafarer onboard the vessel, regardless of whether the employer is the shipowner or not.
- 11. Can the seafarer's maritime lien for wages be abandoned or waived by agreement?**
- 11.1 The maritime lien must be claimed within one year of disembarking, otherwise it is lost. The maritime lien can be abandoned by not prosecuting the claim in a timely manner and can be subject to a waiver by agreement.
- 11.2 However, constitutional principles in Panama prohibit the waiver of a right in any way or form that abuses labour rights.
- 12. When is the seafarer's maritime lien for wages forfeited or not recognised or extinguished?**
- 12.1 The maritime lien is not recognized after a period of one year: it is simply prescribed.
- 12.2 A maritime lien attaching to the vessel is extinguished upon the judicial sale thereof, but the wages claim attaches to the proceeds of the sale. The maritime lien is extinguished after one year.