

SEAFARER SUBJECT GUIDE

SHIP ARREST FOR SEAFARERS' IN ENGLAND & WALES

This Guide deals with the rights of seafarers of any nationality to arrest a ship for unpaid or underpaid wages in a port in England or Wales.

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

If a seafarer intends to arrest a ship in England or Wales, he must consult a lawyer qualified to practise in England or 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. Can a seafarer arrest a ship for unpaid wages regardless of his nationality and regardless of the flag of the ship?

1.1 The Admiralty Court of the Queen's Bench Division of the High Court of Justice is the only court that has jurisdiction to arrest a ship in England and Wales. Although there are a number of regional courts (District Registries of the High Court) that are entitled to exercise Admiralty Court jurisdiction, in practice this is limited to issuing the initial process within that District Registry. Thereafter, the proceedings will be transferred to the Admiralty Court in London.

1.2 The Admiralty Marshal is responsible for the management of the arrest of ships, and he is located at the Admiralty Court in London. The Admiralty Marshal is not a judge, but has wide powers in respect of ship arrests and is responsible for the decision as to whether a ship may be arrested, undertaking the arrest and once arrested he is also responsible for ensuring that the arrested ship is properly maintained. Only in unusual cases will an application for the arrest of a ship be referred to the Admiralty Judge.

2. What is the time limit within which a seafarer must start a claim for unpaid wages?

2.1 Sections 20 to 24 of the Senior Court Act 1981 ('the SCA') provide the substantive statutory law in relation to the claims in respect of which a vessel may be arrested, and the Civil Procedure Rules 1998 ('the CPR') provide the procedural framework by which ship arrest is governed. References to practice forms prefixed ADM are to the forms prescribed by the CPR in admiralty proceedings.

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2.2 Section 20(2)(o) of the SCA provides the basis for the Admiralty Court's jurisdiction for a claim by a master or member of a ship's crew for wages. The SCA does not itself provide that such claims carry the status of maritime lien, but the fact that such claims carry the status of a maritime lien has been confirmed in many cases, dating back to the 1800s.

2.3 Section 20(2)(f) provides the basis for the Admiralty Court's jurisdiction for a claim for loss of life or personal injury related to a ship. It is important to note that a claim for loss of life or personal injury is not secured and preferred by a maritime lien.

3. What documents are required to obtain an arrest of a ship?

3.1 The primary consideration that arises for an arrest for an injury claim, which does not arise for a wage claim, is that before a ship may be arrested it is necessary to show that at the date on which the claim form is issued that the party who would be liable for the claim (that is, the owner of the vessel responsible for the injury) is the owner of the vessel to be arrested.

3.2 There is no such requirement for a wage claim, because a maritime lien attaches to the vessel (like a mollusc to a hull and travels with the ship, even after its changes ownership) and the identity of the owner at that time of the arrest is not a relevant consideration. All that matters is that the seafarer is arresting the vessel on which the wages were earned.

3.3 This means that for a loss of life or injury claim an arrest of the vessel on which the injury occurred will not be possible where that vessel has changed ownership between the incident causing the injury or death and the date that the claim form is issued. A seafarer with such a claim should not delay in issuing a claim form, even if the ship is not within England or Wales. Once the claim form is issued, the claim crystallizes against the vessel and a subsequent change of ownership would not defeat that claim or the right to arrest the vessel if the vessel subsequently calls at a port in England or Wales.

3.4 An alternative to the arrest of the vessel on which the injury arose, is to arrest a sister ship. It would be possible to arrest any other vessel that, at the time of the arrest, is owned by the same owner as the vessel on which the death or injury occurred. It is important to note that this means that the registered owner must be the same. Although the SCA talks of the beneficial owner, the English courts have long accepted the legitimacy of the 'one ship company' structure now favoured by modern shipowners. English law will only pierce the corporate veil, if it can be shown that the corporate arrangements are a sham designed to defraud creditors.

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- 3.5 It therefore follows that English law does not recognize 'associated ship arrests' as allowed in jurisdictions such as South Africa and France.
- 4. What are the costs of the arrest, including court expenses and other expenses?**
- 4.1 The Admiralty Court has jurisdiction over both UK and foreign seafarers' claims, whether they relate to UK or foreign ships.
- 4.2 The ship concerned must be located within the territorial waters of England and Wales before it can be arrested or before any proceedings may be served on it.
- 4.3 However, it is possible (and usual) to issue proceedings and obtain a warrant of arrest before a vessel arrives within the court's jurisdiction, and service can then be effected when the vessel arrives within the jurisdiction.
- 4.4 A claim for wages on the basis of a maritime lien must be brought against the vessel on which the wages were earned and not any other vessel.
- 4.5 However, where the vessel on which the work was undertaken is not available for arrest for whatever reason then there is no reason why it would not be possible to arrest a different vessel to the one on which the work was undertaken provided it was owned by the employer who had failed to pay the wages. However, such a claim would not have the status of a maritime lien, and would be dependent upon the employer under the relevant contract owning a vessel or vessels.
- 4.6 The Admiralty Court is seised when an *in rem* claim form has been issued and served upon the subject vessel.
- 4.7 The Admiralty Court will assume jurisdiction over seafarers' claims for wages unless the contract of employment expressly provides that the courts of another country should have jurisdiction for any dispute. Even where a foreign court may have jurisdiction, the Admiralty Court may order that the property remain arrested in England as security for those foreign proceedings. The issue of a foreign jurisdiction clauses can be complex, as the claim brought against the vessel may not be contractual. For example, the contract containing the jurisdiction clause may be with a charterer or crew management company, whereas the claim is brought quite legitimately against the vessel and its owners. If the owner did not contract with the seafarer then it probably cannot invoke the benefit of the jurisdiction clause in a third party contract.

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- 4.8 A foreign jurisdiction clause within a contract of employment would very rarely prevent an arrest in England, but it might give rise to the requirement to commence parallel proceedings in another jurisdiction.
- 4.9 It ought to be understood that the jurisdiction of the English Admiralty Court is founded when a claim form is served on a ship. Service of a claim form is not the same as the arrest of a ship, and admiralty proceedings can be served and run their course without the vessel having been arrested.
- 4.10 The purpose of the arrest is to obtain security for the claim that is brought against the vessel, so that in the event of a favourable judgment the claimant knows that this judgment can be enforced. On a more practical level the arrest also puts pressure on the shipowner to pay overdue wages.
- 4.11 There may be cases, however, where it is not considered necessary to arrest the vessel, but only to commence proceedings that will enable the court to reach a decision. This may be more likely in an injury claim than a wages claim; for example, where the vessel is part of a large financially strong fleet, where an insurer has confirmed that they will meet any judgment, or where security has already been provided.
- 4.12 Unlike most types of claims in the English courts, a claimant or claimants seeking the arrest of a vessel must be represented by a solicitor.
- 4.13 The solicitor must file at court the following documents:
- (1) admiralty claim form *in rem*;
 - (2) declaration in the prescribed form;
 - (3) application for arrest and solicitors undertaking to reimburse the costs of arrest, maintenance and release; and
 - (4) warrant of arrest.
- 4.14 The solicitor must also pay the court fees due in relation to the claim form and the warrant of arrest.
- 4.15 Where there are a number of seafarers with claims against the same vessel, then they may all be included within one claim form and one arrest.
- 4.16 None of these documents are lengthy, and none of them require a detailed explanation of the claim. It is sufficient to describe the nature of the claims (wages or injury), the approximate value of the claim and the amount of security required. The documents themselves can be completed at very short notice, with minimum

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time. However, it is essential for the solicitor instructed to have sufficient information and explanation to be able to satisfy himself that there is indeed a valid claim that will give rise to the right to arrest.

- 4.17 In respect of the following countries it is not permissible to commence proceedings or arrest a vessel in respect of wages or working conditions unless two weeks' notice has been given to the Consular Office of the country in which the vessel concerned is registered: Austria, Belgium, Denmark, Germany, Bulgaria, Greece, Hungary, Italy, Japan, Mexico, Norway, Poland, Romania, Spain, Sweden and Egypt. Proceedings issued in breach of this are a nullity (void). It is therefore important to take heed of this requirement.
- 4.18 For an injury claim (due to the absence status as a maritime lien) it is also necessary to state:
- (1) the name of the person liable on the claim; and
 - (2) that this person was when the claim arose the owner, charter or person in control of the vessel on which the claim arose; and
 - (3) at the time the claim form was issued that person was the registered owner or bare-boat charter of the vessel to be arrested.
- 4.19 An experienced admiralty lawyer will understand what is required, and have the resources to obtain the necessary information. However, it can be at this stage that a change of ownership may be identified, which can prevent an arrest. It is important to take care at this stage not to make a mistake. An error made in good faith should not expose the arresting party to a claim for wrongful arrest, provided that once the mistake is identified the arrest is released.
- 4.20 The undertaking signed by a solicitor is a serious matter for the solicitor. The solicitor personally undertakes to reimburse the court with all costs incurred by the court in the arrest, release and maintenance of the vessel during the period of the arrest. These costs are the Admiralty Marshal's Expenses. It should be noted, however, that this undertaking is an open-ended guarantee by the solicitor, and cannot and should not be given lightly.
- 4.21 Consequently, a solicitor who is instructed to arrest a vessel will wish to be satisfied that the client (or some other party assisting the client) has the financial means to reimburse the solicitor for any amounts that the solicitor may be required to pay to the Admiralty Marshal. In many cases the solicitor may require that he is placed with sufficient funds to discharge those costs, before the arrest is undertaken.

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- 4.22 The decision on funding may partly depend upon the risk that the vessel may not have sufficient value to cover the priority claims.
- 4.23 The documents must be filed in person at the court within usual opening hours (either the Admiralty Court in London or one of the District Registries) together with the applicable fees. Provided that the documents have been completed properly, the Admiralty Marshal should issue the warrant of arrest within a matter of minutes.
- 4.24 Due to the fact that the ship to be arrested will often be many hundreds of miles from the court office the Admiralty Marshal will first take steps to serve a 'notice of action' on the vessel. He will do so by sending the notice of action by fax or email to the local Customs Officer, who will then deliver the document to the vessel. In cases where the arrestor is the current crew on board, the Admiralty Marshal may email the notice of action directly to the vessel. It is contempt of the court for any party who has knowledge that a warrant of arrest has been issued to move a ship from its current position. The notice of action is designed to ensure that all relevant persons have notice of the warrant of arrest, until such time as the warrant of arrest can be served. The notice of arrest will be dispensed with if there is sufficient time between the warrant of arrest being issued and the vessel arriving to enable the warrant of arrest to be available at the port of arrival when the vessel arrives.
- 4.25 The vessel is deemed to be arrested once a warrant of arrest is issued, though the importance of serving the warrant of arrest as soon as possible should not be underestimated. Only those persons with knowledge of the Warrant of Arrest would be guilty of contempt of court for sailing a vessel away from the jurisdiction.
- 4.26 As quickly as possible thereafter the Admiralty Marshal will send the warrant of arrest and the claim form to the local Customs Office, so that they can be served upon the vessel. The Admiralty Marshal will sometimes appoint a private process server (often a ship's agent or a local solicitor) to undertake service if the Customs Office cannot accommodate the work.
- 4.27 Where a vessel is expected to call during the night or at the weekend and to depart quickly then it may be necessary to ensure that arrangements have been made with the Admiralty Marshal for the appointment of such a private process server to ensure that the documents can be served in time.

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5. Does the arresting party have to lodge counter security against wrongful arrest?

- 5.1 Section 24(1) of the SCA defines a ship as 'every description of vessel used in navigation'. The CPR defines a ship as 'any vessel used in navigation'. There has been much case law on what does and does not constitute a ship that can be arrested, from which it can be seen that the essential touchstones are that:
- (1) the vessel is capable of being navigated (meaning that a navigator can determine the current position, and plot a course to a desired destination); and
 - (2) the vessel in fact requires navigation (it is operating in open water).
- 5.2 Problems would rarely arise in a seafarers claim for wages, since if the vessel was crewed then it is likely that it was 'used in navigation'. Where an injury claim is pursued then it is perhaps more conceivable that a dispute could arise as to whether the vessel concerned was indeed a ship within the meaning of s. 24(1) of the SCA.
- 5.3 It is not possible to arrest a vessel simply sailing through English territorial waters. The vessel must be anchored, or berthed.
- 5.4 It is rarely necessary to consider the geographical limits of the Admiralty Court's jurisdiction, as practical rather than legal considerations will dictate whether in fact a vessel can be arrested. A vessel several miles out at sea will not in practical terms be available for arrest, as serving the papers and keeping the vessel secure will be more or less impossible. The Admiralty Court has made clear that neither the Admiralty Marshal nor his appointed agents are required to put themselves in the way of peril serving a Warrant of Arrest on a vessel (whether at anchor or otherwise in a dangerous place). That is not to say that it is not possible, but each case will be considered on its own facts and merits.
- 5.5 The local harbour master will be advised of the arrest, and will not allow the departure. Where the vessel may be at anchor, there may be no physical barrier to departure. In the context of seafarer wage claims for the current crew, this would rarely be an issue as the crew will not sail away a vessel which they have themselves arrested.
- 5.6 Where the claim may be brought by a former crew member, or by one or two (junior) members of the crew the position may be less secure. Where necessary, the Admiralty Marshal can arrange security, but this is unusual and certainly not arranged as a matter of course.

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5.7 Ships 'jumping' arrest in England and Wales are very rare indeed.

6. Once a vessel has been arrested, will the court accept jurisdiction over the substantive claim?

6.1 During the period of the arrest the Admiralty Marshal has an obligation to take the steps necessary to maintain the vessel and crew. In the majority of cases the arrest will achieve its purpose in quick time, with the owner settling the claim (or in the case of a death/injury claim more likely provide security for the claim, by way of a P&I Letter of Undertaking) before the Admiralty Marshal need concern himself with such matters.

6.2 In such cases the arrestor's solicitors will ensure that the sum claimed/paid is sufficient to cover both the wages, interest and any legal costs incurred. Once payment has been made the vessel can be released from arrest (provided that there are no cautions filed) by the arrestor's solicitor filing a request for the release of the vessel. The Admiralty Marshal will take care of promptly advising all relevant parties and removing the warrant of arrest from the vessel.

6.3 All that then remains is for the Admiralty Marshal to provide his final note of his arrest expenses (if any) to the arrestor's solicitor for payment. Any such expenses should have been collected from the owner when the final settlement was agreed.

7. Will the crew and vessel be maintained/supported during the arrest?

7.1 There will be cases where the owners delay in settling the claim, or indeed abandon the vessel and its crew altogether.

7.2 In situations where the owners fail to make provision for the crew in terms of food, water and fuel then the Admiralty Marshal will provide for their basic requirements. Sufficient food, water and fuel will be provided, and the Admiralty Marshal will also usually appoint an agent to liaise with the crew and other authorities. Where essential repairs are necessary to ensure the crew have safe living conditions then these will be undertaken. If the vessel is not fit for habitation then the crew will be moved ashore and reasonable living expenses will be covered. The Admiralty Marshal would only assume the responsibility for repatriating the crew, if the court has made an order that the vessel be sold.

7.3 The shipowner has 14 days within which to acknowledge the claim, by filing an acknowledgement of service. During the period there is nothing that the arrestor can do but wait.

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- 7.4 If this period expires without the shipowner filing an acknowledgement of service then the arrestor may make an application for judgment in default. Such application has to be made to the Admiralty Registrar or the Admiralty Judge.
- 7.5 More importantly, any time after the 14 day period has expired, and regardless of whether an acknowledgement of service has been filed, the arrestor may also make an application for the sale of the vessel *pendente lite*. This is a request that the vessel be sold before the arrestor has judgment for its claim. Essentially, if the arrestor can show that the vessel is a 'dissipating asset' then the court may be inclined to order its early sale. In any case where the owner has stopped paying the wages of the crew and stopped providing food, water and fuel there would have to be very good reason for not making an order for sale *pendente lite*. Such an application must be made to the Admiralty Judge.
- 7.6 Only a party who has the vessel under arrest may make an application for the sale of the vessel. In a situation where someone other than the crew has arrested the ship, if the crew wishes to take the initiative (perhaps due to delays on the part of the arrestor in seeking the sale of the ship), then they would themselves be required to arrest the vessel.
- 7.7 A party who has the vessel under arrest should not delay in prosecuting their action. The Admiralty Marshal is not a shipkeeper.
- 7.8 Indeed, an application for sale may be sufficient encouragement for a delaying owner to settle the wages, so as to avoid his ship being sold.
- 8. Is the presence of the crew on board the vessel necessary during the course of the legal proceedings or can the crew be repatriated before the ship is sold?**
- 8.1 There are certain practical matters which have significant importance to seafarers seeking to sell a vessel to recover their wages.
- 8.2 An arrestor who approaches a court with a request for the sale of the vessel must satisfy the court that it will deal with the crew on board. In effect this means that the party seeking the sale will make arrangements for the crew's repatriation. However, where the crewmembers on board have unpaid wages they may refuse to leave the vessel until those wages are paid. The court will not order that a crew must leave the vessel, and neither will the Admiralty Court make an order for the sale of the vessel until satisfactory arrangements have been made with the crew on board.

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- 8.3 This often takes an arresting party by surprise and when they may be faced with a wage claim and repatriation expenses that can be very significant it is not unknown for an arresting party to walk away from an arrest at that stage. They simply may not have the funds to settle the wages and the repatriation expenses. In such situations it is important to have a constructive dialogue with the arrestor, and to find a solution that allows the vessel to be sold without delay.
- 8.4 This might mean the crew accepting a partial payment, plus their repatriation with the balance to be paid in due course from the proceeds of sale. Seafarers may often be nervous of departing without full payment of wages, but there may be situations where this is the best course.
- 8.5 Where the crew is the arresting party who seeks an order for sale then it must be understood that it will not be possible for the crew to receive their wages before they depart the vessel. When the crew makes its application to the court, it will have to undertake to leave the vessel at a stated point in time, which will be prior to the sale being completed.
- 8.6 Where the crew is the arrestor and party applying for the sale of the vessel, the Admiralty Marshal will fund the costs of repatriation (but not any payment of wages). It must be appreciated, however, that such costs will form part of the arrest expenses, and the Admiralty Marshal will seek such expenses from the arrestor's solicitor if, for any reason, the proceeds of sale of the vessel are not sufficient to cover those arrest expenses.
- 9. Do the seafarer's wages continue to accrue during the arrest?**
- 9.1 The claimant's solicitor gives an undertaking for the Admiralty Marshal's Expenses. These may include the following:
- (1) costs of serving the warrant of arrest, which may include the costs of an agent appointed by the Admiralty Marshal, together with launch or other travel costs, and these costs are usually not significant;
 - (2) costs of releasing the arrest, and only rarely would these be significant costs, or any costs of release; and
 - (3) Costs of maintaining the vessel and crew during the period of arrest.
 - (4) The costs of selling the vessel, including broker's fees, survey fees, repatriation costs and court fees.

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- 9.2 Where the Admiralty Marshal is required to provide for the crew, he does so on the basis that he will be reimbursed pursuant to the solicitor's undertaking given when the vessel was arrested.
- 9.3 It would be usual that the Admiralty Marshal's expenses will in fact be reimbursed in one of two ways:
- (1) upon settlement of a claim by owners, as part of the seafarers' claim for legal costs, the Admiralty Marshal's expenses form part of the legal costs, and where a settlement with owners is achieved the seafarers' solicitor should ensure that such costs are included in the terms of settlement; or
 - (2) from the proceeds of sale of the ship (in the event that it is necessary to have the vessel sold by the court).
- 9.4 However, it must be understood that there could be situations where the proceeds of sale of the ship are insufficient to even cover the Admiralty Marshal's expenses. In exceptional cases, the vessel may sink such that it cannot be sold or it may simply have no value whatsoever due to its condition. In such cases the Admiralty Marshal will look to the undertaking for payment of his arrest expenses.
- 9.5 It may be noted, therefore, that although an arrest is a means by which an abandoned crew can ensure that they are fed and kept warm, they will ultimately be responsible for the expenses incurred on their behalf if they cannot be recovered elsewhere.
- 9.6 The current practice of the Admiralty Marshal is not to include port dues within his expenses. However, there may be cases where port dues will fall within his expenses (for example, where a decision is made to move the vessel from one port to another). Where port dues do fall within the Admiralty Marshal's expenses then they can give rise to significant sums, very quickly. This will be a concern for the solicitor who has given an undertaking and he will be looking to his clients for reimbursement of any sums that ultimately he has to pay.
- 9.7 Despite the fact that port dues will in most cases not fall within the arrest expenses, they are still an expense that will fall to be paid in priority to the seafarer's wages. A port authority has a statutory lien for its dues, and where the court is to sell a vessel then by agreement with the Admiralty Marshal the port gives up that lien in exchange for an undertaking that the port dues will be paid as arrest expenses, if there are sufficient proceeds of sale to allow that after all other arrest expenses have been settled.

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9.8 In order to prevent the Admiralty Marshal's expenses from rising to a level that jeopardizes the recovery of wages and the reimbursement of those expenses it is imperative to avoid unnecessary delay in having the vessel sold.

10. How long on average does it take for the court to sell the vessel and then distribute the sale proceeds in settlement of the crew's claim?

10.1 There are two ways in which the Admiralty Court can sell a vessel:

- (1) private treaty to a named buyer identified by the arrestor; or
- (2) public tender, by inviting closed bids.

10.2 In either case, the court ordered sale of the ship provides a valid title to the purchaser, free of maritime liens and good against the whole world.

10.3 It is very often the case that the arrestor identifies a buyer who is willing to pay market rate for the vessel. In such cases the arrestor can present that buyer to the court, and if the court is satisfied that the sale to be named buyer is to the benefit of all parties then the sale will be approved.

10.4 Such a sale is advantageous for several reasons. It gives certainty to the arrestor about what the vessel will achieve, and thus enables an accurate calculation to be made as to whether there will be sufficient proceeds to make the process worthwhile. It is also faster than a sale by public tender, which will take approximately eight weeks from the date that the order for sale is made.

10.5 Where seafarers may have arrested the ship, a sale by private treaty also reduces the period when they must be at home without their wages. For a public tender sale the seafarers would be expected to leave the vessel some six to eight weeks before any proceeds of sale may be available to be paid out to them by the court. Where a private treaty sale is approved, this period might be two to three weeks, or even less.

10.6 Where the vessel is sold by public tender it will be advertised by brokers, and offers invited by a stated date. The highest offer will be accepted, and payment of an initial deposit and the balancing payment would be completed within ten days or so of the offer being accepted. The entire process from order for sale to payment of purchase price would be seven to eight weeks. Of course, the eventual purchase price is uncertain.

10.7 This uncertainty is difficult where the vessel may be of low value, and claims with priority over the seafarer's claim may be at risk of exceeding that value.

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11. How are the lawyer's fees for arresting the ship paid?

- 11.1 When the ship is sold, all the maritime claims against the ship are ranked in order of priority with the objective of being paid. A maritime claim given the highest ranking will be paid first, provided there are sufficient proceeds from the sale of the ship to pay the maritime claim. However, a maritime claim ranking last may or may not be paid, depending on whether or not the remaining proceeds are sufficient to pay the claim.
- 11.2 The ranking of claims whether or not the ship is a United Kingdom ship is determined in the Admiralty Court as a matter of procedure and therefore in accordance with English law as the *lex fori* (that is to say, as the law of the court).
- 11.3 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.
- 11.4 The Admiralty Marshal's arrest expenses are ranked first and will therefore be paid first. Any port dues outstanding to the date of sale will then be settled, as if they were arrest expenses.
- 11.5 Next come the legal costs of the party who arrested the ship and sought its sale thereby producing the fund (proceeds of sale).
- 11.6 Thereafter, maritime liens have priority over all other claims. 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 lesser priority.
- 11.7 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 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.
- 11.8 A injury or death claim would rank after a mortgage, and alongside many other claims such as unpaid supplies of goods and services and cargo claims.
- 11.9 It may be seen, therefore, that whilst a seafarer's wage claim brought against the vessel on which the wages were earned has a high priority there may still be significant claims with priority to the seafarer which could put recovery at risk if the vessel's value is low.

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12. Are there any other procedures to enforce a seafarer's wage claim?

- 12.1 Where a seafarer may wish to bring a claim against a vessel which is already under arrest by some other party then it is not necessary to place a further arrest (unless this is necessary as a pre-cursor to an application for sale of the vessel by the seafarer).
- 12.2 A caution should be filed with the Admiralty Court. This is a short and simple document that simply gives notice to the court that the party filing the caution has a claim. The caution will be entered into the caution book. The vessel cannot be released from arrest without notice to the cautioner of the intention to release and giving the opportunity to the cautioner to re-arrest.
- 12.3 The cautioner must also be served with copies of all applications made by the arrestor or any other party that concern the vessel. The caution therefore enables the cautioner to keep a close eye on the progress of the proceedings.
- 12.4 In some cases it may also be appropriate to issue and serve a claim form, for example, to obtain a judgment for the wage claim or to guard against the risk that the vessel may be sold (which would extinguish the right to arrest for a death/injury claim).
- 12.5 It would be only in a rare and unusual case that the English Admiralty Court would award damages against an arrestor for wrongful arrest. The arrestor must be guilty of *mala fides* or *crassa negligentia*. Each case will turn on its own facts, but the court will have to establish whether the arrestor was *bona fide*, acting with probable cause and without *crassa negligentia*. Provided that the arrestor acted in good faith, the fact that they made an error of judgment would not expose the arrestor to damages.
- 12.6 Where the necessary elements are present to entitle an owner to damages, then the owner must prove actual loss.