

## **Seaman’s Wage Claims, and Maritime Liens – Part I: Introduction to the Principles**

The remedies available to seamen when their wages go unpaid are unlike those remedies available to any worker in any other industry - they are truly extraordinary. It is wise for every mariner to have a basic understanding of what a *maritime lien for wages* is, and how it can help them enforce their rights to fair compensation. Conversely, it is important for vessel owners to understand these principles of maritime law so that they can prevent unnecessary or inappropriate claims against their vessel, claims that can result in the arrest, sale and general interference with the business activity of the vessel. Assisting in this understanding is the purpose of this series of the Legal Desk focusing on seaman’s wage claims.

For those working aboard a vessel, a “maritime lien” arises when they go unpaid and the lien attaches to the vessel for the amount of their unpaid wages. This maritime lien gives the seaman the right to arrest, sue, and even sell the vessel if their claim is not satisfied. The remedy is a powerful one, but must not be used recklessly or maliciously. The starting point to understanding a “maritime lien for seaman’s wages” is to understand what a *lien* is.

### **What is a Lien?**

The issue of “what is a lien” fills volumes of mind-numbing text, but generally speaking, a lien is a person’s legal right that arises in respect of property as result of a rule of law. Simply put, its essential purpose is to ensure that the person who holds the lien has their claim satisfied – usually this means getting paid. In this sense, a lien is a type of security for payment of a debt.

Liens typically arise from two sources: statutes, and common law. “Statute law” is the law written and enacted by the elected law makers, being either the provincial legislature or the federal Parliament. “Common law” on the other hand is law that has developed from courts of law deciding cases, and further courts following or varying those decisions – courts will try to achieve consistent results when asked similar questions, that is, they will develop “common” law. Liens created by statute are called “statutory liens” and liens created by common law are, not surprisingly, called “common law liens”.

Examples of statutory liens are mechanic’s liens under the *Repairers Lien Act* (a B.C. statute), and warehousemen liens under the *Warehouse Lien Act* (another B.C. statute). Each of these liens gives the repairer or warehouseman certain rights against property they have repaired or stored that allows them to collect money owed to them for their services in the event they are not paid when expected. These liens provide the lienholder (the

repairer or the warehouse) with the ability to retain and sell the property to satisfy their claim for monies.\*\* - see footnote.

An example of a common law lien is a possessory lien. A possessory lien arises when a person provides some value to property and keeps possession of it pending payment. A possessory lien exists only so long as they do not voluntarily give up possession of the item. The possessory lien does not give the party the right to sell the item, only to retain it pending satisfaction of their claim (though this right of sale is given under a statutory lien). While repairers and warehousemen have possessory liens so long as they retain possession, their statutory liens allow them to lose possession of the item yet retain a lien provided they meet certain conditions (such as registering their lien in a government registry). This legislation also provides the right to sell the property, a right the repairer did not have under their possessory lien. The repairers and warehousemen lien legislation was created so that repairers could release the property, and hence encourage commerce, while protecting their claims.

### **Maritime Liens – An Extraordinary Lien:**

Maritime liens are common law liens, that is, they have arisen out of hundreds of years of court decisions recognizing persons' rights in property. Centuries of shipping and navigation law have given rise to a select few types of claims being recognized as "maritime liens". These special liens include liens for salvage (see Legal Desk article May 2004) , liens for bottomry (costs incurred in supporting the vessel away from home port, usually paid by the master when the owner's wallet is not available), and a seaman's claim for wages.

Each of these maritime liens provide the lienholder with unusual rights. Firstly, the maritime lien travels with the vessel wherever it goes, including to other provinces and countries, but also into the hands of another owner (even though they haven't been told about it – buyer beware). Importantly, the maritime lien also provides that the lienholder's claim is placed in a high priority position in relation to other creditors of the vessel. For example, a maritime lien for wages will rank ahead of a mortgage registered against the vessel, even though the mortgage was registered many years prior. This ranking, or ability to be paid in priority to other claims, is a critically important advantage when there is a limited amount of money to be had. For example, when a vessel owner who owes you \$5,000 in wages goes bankrupt, and his \$500,000 vessel has a \$600,000 mortgage on it, the only way to ensure you will see money for your wages is to ensure you rank ahead of the mortgage-holder. Maritime liens, including seaman's liens for wages, provide this important advantage.

### **Seaman's Wage (Maritime) Liens:**

The maritime lien is extremely useful to seamen because it allows the seaman's claim for unpaid wages to attach to the vessel, like a barnacle, and follow the vessel wherever it goes, even into the hands of a new buyer. The seaman can have a maritime lien for wages, and a right against the vessel on which they worked, regardless of whether they

had a contract with the owner of the vessel, whether the owner is bankrupt or not, and even when they can't find the owner.

A seaman's wage claim can only arise if the person making the claim actually worked on the vessel. The seaman need not have actually navigated the vessel in order to have a seaman's wage lien, but it is helpful if they worked on the vessel while it was navigating. For example, a musician or hairstylist on a cruise ship can have a seaman's wage lien because they worked on the vessel during a cruise, but a worker that labours on the vessel while in port, such as a shipyard welder, likely does not have a seaman's wage claim.

When shipowners are faced with a seaman's wage claim they must consider carefully the work done by that person to ensure they are "seaman" and therefore whether they are actually entitled to the extraordinary remedies of a maritime lien for wages. In many cases they will not be, and this is often of benefit to the owner and their creditors.

### **Giving Effect to the Seaman's Wage Lien:**

The seaman gives effect to their wage lien by suing the vessel for the wages in a court that has jurisdiction, or authority, in Admiralty law. In British Columbia, courts with authority in admiralty law include the Supreme Court of B.C. and the Federal Court of Canada. These courts have something called "in rem" jurisdiction, or legal authority to consider claims against property (as distinct from claims against a person or a legal entity like a company, which are the typical defendants in law suits). In an *in rem* claim, you sue the "res", being the property, which in the case of a seaman's wage claim is usually the vessel. In some cases however, where the vessel is not available, but parts of the vessel are available such as an engine or other machinery, it may be possible to sue that item.

While suing a vessel may sound odd, the court treats the vessel as if it were a person. The crewmember may ask the court to grant a warrant to arrest the vessel to ensure that it does not go anywhere pending the wage claim being heard by the court. The owner or other party interested in the vessel (such as a bank holding a mortgage on the vessel) may appear in court on the vessel's behalf and defend against the wage claim. This would be of interest to that party because the ultimate remedy of an *in rem* claim, if the claim is not satisfied, is the sale of the vessel to satisfy the claim. In other words, if a shipowner is not paying attention, a crewman owed \$1,000 in wages could sell their \$100,000 vessel. While this is a drastic result, shipowners should not ignore claims by seaman for wages, for the seaman wield a very large club, being a *maritime lien for seaman's wages*.

In next month's Legal Desk we will discuss the general employment law principles of *severance*, and damages for *wrongful dismissal*, and how these claims made by a seaman, or defended by an owner, can effect a vessel.

\*\*Footnote:

*While these types of provincial statutory liens likely do not apply to vessels (because the provincial legislation conflicts with the Federal government's exclusive jurisdiction over navigation and shipping), developing case law indicates this provincial legislation may apply to vessels that ordinarily operate within the boundaries of the Province. In B.C.'s case this includes operations carried out in Johnston Strait, Georgia Strait and parts of Juan de Fuca Strait. Of course, this affects many coastal tugs, fishboats and other vessels. This is an important matter for a future Legal Desk article.*

*Darren Williams, a former commercial fisherman, is a lawyer with the marine law firm of Williams & Company and can be reached for question or comment at 250-478-9928 or at [dwilliams@MarineLaw.ca](mailto:dwilliams@MarineLaw.ca).*