

MARITIME NEWSLETTER

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THE INSOLVENT SHIPOWNER

PREMIER CRUISE VESSELS ARRESTED; NPR FILES CHAPTER 11

Many suppliers of goods and services to ships and boats operating in Florida were surprised by the insolvency of Premier Cruise Lines and Navieras de Puerto Rico, Inc. Now, many of those same vendors find themselves facing bankruptcy and learning the hard lesson that with maritime claims, an **un-perfected maritime lien has little value**. With the maritime industry in a weak condition, more insolvencies and bankruptcies are bound to occur. This newsletter will help you protect yourself.

THE MARITIME LIEN FOR “NECESSARIES”

Vendors who sell to shipowners and boat operators have a powerful tool to enable them to secure their claims through the use of the maritime lien for necessities. However, maritime liens are different than land-based property liens in many important respects, not the least of which is that in maritime lien enforcement, “last in time is first in right.” That means that each month that you permit your outstanding invoices to be left unpaid **other maritime suppliers are jumping ahead of you in line** for eventual payment.

Frequently Asked Questions About Maritime Liens:

WHAT ARE NECESSARIES?

Necessaries include **repairs** to a vessel (e.g. repairs to electronics, shipyard repairs, electrical and air conditioning repairs); **supplies** (fuel and oil, food and beverages); towage (docking assistance and piloting); and the use of a dry dock or marine railway. Some goods and services which are necessary to the operation of a vessel do not create maritime liens at all—such as new construction claims, some insurance premiums and some advertising expenses.

OTHER MARITIME LIENS

Dockage, personal injury claims, dock and seabed damage, collision damage, port charges and other claims create maritime liens.

WHAT IS A “PREFERRED MARITIME LIEN”?

Other claims, like those for crew **wages**, **stevedoring**, and salvage are called “preferred maritime liens” and have a higher priority than necessities. On a U.S. documented vessel, preferred maritime liens get paid before a preferred mortgage lien.

IS THE CREW BEING PAID?

Not only do crew wage claims enjoy the highest priority, the crewmembers are entitled to penalty wages of double wages for each day that their wages are delayed. Because of this stiff penalty provision, the **failure to pay crew wages is usually a signal** that a vessel operator is in deep financial difficulty.

The insolvent shipowner

“NO LIEN” STAMPS

Many shipowners attempt to protect themselves from liens by requiring charterers to rubberstamp all invoices with a statement that no liens attach to the ship. If your bill comes back from a boat operator with a “no liens” stamp on it, it is ineffective the first time you receive it. However, if you continue to extend credit after that date, you may find yourself without a maritime lien to enforce. Consider placing customers using “no lien” stamps on a **cash only basis**.

HOW TO “PERFECT” A MARITIME LIEN

Maritime liens are unwritten and invisible and they can be extinguished or superceded (called “priming”) by inaction. The best way to perfect a lien and keep it from being “primed” is by attaching the ship or boat through a judicial proceeding known as a “vessel arrest.” **In most cases, the attachment lasts less than 24 hours**, although if a claim is large it can result in the sale of the ship to satisfy the outstanding liens.

WHAT ABOUT BANKRUPTCY?

Once a shipowner has filed for bankruptcy, a ship or boat **cannot be attached**. Consequently, vendors who attach ships and boats prior to the filing of bankruptcy get paid more quickly, and paid more of their claim than those who wait until their customer declares bankruptcy.

WHY NOT WAIT FOR ANOTHER VENDOR TO ATTACH?

First, the reason most attachments last less than 24 hours is that the shipowner is trying to prevent other lienors from asserting their liens. Consequently, most attachments never get any publicity and **no public notice** is given.

Secondly, the rules are designed to prevent lienors from allowing others to “foot the bill” for the attachment while they sit back to see what happens. Many lienors who do not promptly enforce their liens find themselves left with the remnants, if any, after all other liens are paid.

WHY NOT WAIT FOR THE LENDER TO ATTACH THE VESSEL?

Because of the nature of vessel financing, it is rare when the market value of a ship or boat exceeds the amount of the mortgage debt. Usually when the lender attaches the vessel, it is too late for other maritime lienors. Most banks and lenders will receive a bigger percentage of the loan value if the vessel continues to operate than if it is attached. *If the vessel is operating, the lender has a powerful incentive* to see that liens for necessities are paid.

LEGAL COUNSEL

The selection and retention of a lawyer for any purpose is an important decision which should not be based solely on advertisements. Maritime suppliers should choose a firm that concentrates in admiralty and maritime law. A list of attorneys who are certified by the Florida Bar in admiralty and maritime law can be obtained online at www.flabar.com. The qualifications of the lawyers at Sullivan, Boyd & Goldsberry can be found at www.floridamaritimelawyers.com.

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