

**THE MERITIME LAW ASSOCIATION OF THE UNITED STATES
SPRING MEETING**

Marine Financing Committee

Outline

**SOME INTERNATIONAL ASPECTS OF
ENFORCEMENT OF MARITIME LIENS IN THE UNITED STATES**

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- I. The enforcement of maritime liens in the United States is not constrained by international conventions on maritime liens and on the arrest of ships.¹
- II. United States law on maritime liens [CIMLA and court opinions] is very favorable to suppliers of vessels:
 - U.S. law recognizes that the supply of “necessaries” to a vessel on the order of the owner or a person authorized by the owner creates a maritime lien.
 - U.S. law accepts a large class of products and services as “necessaries.”
 - U.S. law is designed to protect suppliers to vessels.
 - A 1971 amendment deleted the duty of reasonable inquiry on the part of a supplier to ascertain whether a charterer is constrained by a “no lien” clause.
 - As a practical matter, a “no lien” clause will not protect the shipowner unless supplier is explicitly told beforehand in writing.
- III. As a result, a **foreign supplier** of fuel to a ship in a **foreign port** with respect to a **foreign-flagged vessel** will commonly insert a choice of U.S. law provision in the supply contract.
- IV. What happens in such a case when a foreign-based charterer orders bunkers from a foreign supplier in a foreign port?
- V. The result is that when/if the vessel comes into a U.S. port the vessel may be seized *in rem* under Admiralty Rule C to assert and execute a maritime lien against the vessel. Although the shipowner is not liable *in personam*, the ship may not be

¹ Arrest conventions were concluded in 1952 and 1999; maritime lien conventions date from 1926 and 1993.

protected against a maritime lien even if there is a “no lien” clause in the charter party.

- VI. **U.S. courts will recognize the choice of law clause and apply U.S. lien law.** Courts reject the argument that this is extraterritorial application of U.S. law and the transaction involved had nothing to do with the United States. *World Fuel Services Singapore Pte. v. Bulk Juliana M/V*, 822 F.3d 766 (5th Cir. 2016); *Triton Marine Fuels, Ltd. v. M/V Pacific Chukotka*, 575 F.3d 409 (4th Cir. 2009); *Trans-Tec Asia v. M/V Harmony Container*, 518 F.3d 1120 (9th Cir. 2008). These cases distinguish *Rainbow Line v. M/V Tequila* 480 F.2d 1024, 1026 (2d Cir. 1973) [choice of U.S. law not effective because “rights of third parties cannot be affected”]. The Supreme Court has denied cert in these cases.
- VII. Consider the following facts, taken but simplified from *ING Bank NV v. M/V Charana Naree*, 446 F.Supp.3d 163 (W.D.La. 2020): The vessel, M/V Charana Naree, is owned by PLV, a foreign company. The time charterer, Copenship (Danish company) orders bunkers from O.W. Bunker (Danish company). O.W. Bunker terms and conditions include a provision choosing U.S. law. O.W. Bunker arranges for bunkers for the vessel to be supplied in Gibraltar by Vemaoil. The invoice for bunkers is sent by O.W. Bunker to Copenship; the invoice is not paid. O.W. Bunkers declares bankruptcy and assigns its rights and interest and any maritime lien to ING BANK. When the vessel enters port in Louisiana, ING Bank files suit against the vessel *in rem* under Rule C.

Issues presented:

1. Will the choice of U.S. law provision be enforced? Clearly yes (see above).
2. If there is a “no lien” clause in the charter party, will this prevent the imposition of a maritime lien on the vessel when bunkers are ordered by the time charterer? Clearly no (see above).
3. As between Vemaoil, the physical supplier of bunkers in Gibraltar, and O.W. Bunker, the general contractor, who has the maritime lien?
4. *Answer:* the maritime lien for necessities accrues to O.W. Bunker, not the physical supplier of bunkers. To obtain a maritime lien, a supplier must (1) furnish a “necessary” (2) to a vessel (3) on the order of the owner/agent. The physical supplier of bunkers satisfies (1) and (2) of these prongs, but not (3). Vemaoil, the physical supplier, furnished bunkers to the vessel on the order of O.W. Bunker, who was not an “agent” or authorized by the owner. On the other

hand, O.W. Bunker meet all three criteria and thus has the lien.² *Valero Mktg. and Supply Co. v. M/V Almi Sun*, 893 F.3d 290 (5th Cir. 2018); *ING Bank NV v. M/V Temara* 892 F.3d 511 (2d Cir. 2018); *Bunker Holdings Ltd. v. Yang Ming Liber Corp.* 906 F.3d 843 (9th Cir. 2018); *Barcliff LLC v. M/V Deep Blue*, 876 F.3d 1063 (11th Cir. 2017).

5. Is the assignment of the debt and lien from O.W. Bunker to ING Bank valid? Yes, maritime liens are subject to assignment.
6. *Full disclosure of my interest in these cases.* In 2015-16 I was attorney/expert representing and working on behalf of ING Bank, who was fighting for its lien to be recognized in all the above cases. Fortunately for my client, my legal opinion prevailed in the courts.

² There are two exception whereby the physical supplier has the lien: (1) where the facts show that the general contractor is the agent of the owner; and (2) where the fact show that a preexisting significant relationship existed between the physical supplier and the owner.