Bunker Intermediaries and their Rights to a Maritime Lien Under CIMLA

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Navigating the Pitfalls of Maritime Mediations

Introduction

The shipping industry in the United States often involves the performance of complex maritime contracts. It is not uncommon for the parties to these contracts to engage in disputes when one of these contracts is breached by one of the contracting parties. When this happens, there are four primary methods for resolving these disputes: direct negotiation, litigation, arbitration, or mediation.

Background

This article will first briefly examine the particulars of the primary methods for resolving maritime contract disputes. The article will then conclude by focusing on some of the pitfalls that parties should avoid when attempting to resolve a maritime contract dispute.

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Bunker Intermediaries and their Rights to a Maritime Lien Under CIMLA

Introduction

Fuel intermediaries supply a valuable service in today’s shipping industry, playing a supporting role in the operation of cargo carriers, by box or in bulk. Working for the vessel, fuel intermediaries order “bunkers” from local physical suppliers and arrange for the suppliers to “stem” the vessel when she reaches the specified port. Such a service is crucial where vessels run international routes on tight schedules and risk delay due to language barriers, changes in currencies or changes in port requirements. Regarded within the industry as “local experts,” intermediaries leverage their knowledge, technology, resources and people to connect the vessel with the most reliable, efficient, safest and low-cost local bunker suppliers at each port, allowing the vessel to voyage on. The largest international liner companies rely on bunker intermediaries out of convenience and the vessels running tramp services rely on them out of necessity.

Given the crucial service bunker intermediaries provide, and the extent to which vessels rely on them to continue moving, one would assume that they would be entitled to a lien for necessaries, specifically a lien for the supply of bunkers, under the Commercial Instruments and Maritime Liens Act (CIMLA). However, Judge Katherine B. Forrest, of the United States District Court for the Southern District of New York, did not agree with such an assumption when she applied CIMLA stricti juris and ruled that O.W. Bunker & Trading A/S, one of the world’s largest bunker intermediaries, was not entitled to a maritime lien for the supply of bunkers. In her opinion, Judge Forrest is unsympathetic to the proposition that brokers like O.W. Bunker contribute to the overall purpose that CIMLA and the maritime lien for necessaries serve – to encourage private investment in the vessel in the form of commercial credit by securing the creditor. Nevertheless, an in depth review of the case law and legislative history behind the maritime lien for necessaries and O.W. Bunker’s success in the market place suggest that Judge Forrest’s view of bunker intermediaries is unsupported and unfounded. Judge Forrest misapplied stricti juris when interpreting the maritime lien for necessaries and O.W. Bunker’s market success should persuade that its services constituted necessaries for which a lien is authorized under CIMLA.

This paper focuses on how bunker intermediaries like O.W. Bunker contribute to the goal served by the lien for necessaries and why ship owners are better off with them than without them. Part I outlines the current state of the law governing the lien for necessaries and provides an overview of the legislative history behind the

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lien for necessaries. Part II relates the rise and fall of O.W. Bunker, as well as how the company’s structure resulted in the litigation of a novel issue. Part II details the specific transaction and issue at the center of Judge Forrest’s ruling in *ING Bank N.V. v. M/V Temara et. al.* Finally, Part III analyzes why Judge Forrest’s decision and reasoning are misguided and how fuel intermediaries like O.W. Bunker contribute to the overall purpose thereof and are therefore entitled to a CIMLA lien for necessaries.

I. The Maritime Lien for Necessaries

   a. CIMLA is the current body of law governing maritime liens and the maritime lien for necessaries.

   The success of a truly global economy depends heavily on an efficient and reliable international shipping industry. Suppliers of a broad range of goods and services are responsible for such efficiency and reliability. This line of work is often risky and uncertain for suppliers who must furnish the vessel with goods and services quickly so that the vessel can immediately turn around and be put back onto sea. In today’s demanding and competitive market, the vessel and shipper’s success depend on decreased port time and increased speed. Therefore, there is a good chance that a vessel may depart before paying for supplies.

   A lien for necessaries is a maritime lien. Maritime liens keep “the channels of maritime commerce open by ensuring that people who service vessels have an efficient way of demanding reimbursement for their labor and are thus willing to perform the services necessary to keep the vessels in operation.” Since the maritime lien is an extraordinary and “secret” right, it is disfavored by law and courts have held that the statutory provisions creating maritime liens are stricti juris. Perhaps new sorts of maritime liens ought to be disfavored by law and be interpreted stricti juris to guard against windfall resulting from their “secrecy.” However, when analyzing whether a supplier is entitled to a lien for necessaries, CIMLA should be interpreted with regard to the generous approach to liens for necessaries that has prevailed so far. The lien benefits those who supply goods and services for the vessel on credit by granting them an *in rem* claim against the vessel itself should the vessel owners abscond. At the same time, a lien for necessaries serves the vessel by allowing it to receive required goods and services more readily, so that it keeps voyaging free of delay or obstacle.

   To minimize this risk, those who (1) provide necessaries (2) to a vessel (3) upon the order of the owner of the vessel or “persons... presumed to have authority to procure necessaries for a vessel” are entitled to a maritime lien against a vessel by law. A maritime lien is a secret and “special property right in a vessel given to a creditor by law as security for a debt or claim arising from some service rendered to
the ship to facilitate her use in navigation or from an injury caused by the vessel in navigable waters.”27 It only arises out of a maritime transaction, such as a maritime contract or tort, but it does not arise out of every maritime transaction,28 making it an extraordinary right.29

b. The history of the maritime lien for necessaries supports a broad interpretation rather than the stricti juris interpretation.

A maritime lien for necessaries is anything but a novel concept. Since 1789,30 courts have understood that a continuous flow of commerce depends on a ship’s ability to obtain services at ports of call, which depends on suppliers being guaranteed payment.31 The lien for necessaries is the product of such understanding. Courts began granting suppliers of food, vessel repairs, towing services and other necessaries a lien against the vessel for the services rendered, making or finding such a remedy part of maritime common law.32

It was not until much later that Congress became interested in the subject. Judicially enforced since 1819, the Home Port Doctrine denied a lien to suppliers in a ship’s “home port.”33 This distinction invited resort to state lien law, which threatened the national uniformity of law on the subject.34 Despite a federal court’s call on Congress to abolish the doctrine in 1874,35 it was not until thirty-six years later that Congress answered with the Federal Maritime Lien Act of 1910. The Federal Maritime Lien Act of 1910 (FMLA) granted a maritime lien to those who furnished “repairs, supplies, or other necessaries, including the use of dry-dock or marine railway.”36 The Act was Congress’ first attempt to broaden the maritime lien afforded suppliers by eliminating the distinction between home and foreign ports and eliminating any presumption of credit to the owner (as opposed to the vessel).37 However, the courts’ narrow interpretation of the Act continued to threaten national uniformity of lien law and dissatisfied Congress.38 Therefore, in 1920, Congress enacted the Ship Mortgage Act and amended the wording to read “repairs, supplies, towage, use of dry-dock or marine railway, or other necessaries.”39 Such amendments reinforced Congress’ intent that the Act be construed broadly, liberally and uniformly so as to benefit the supplier.40 Following these amendments, courts began interpreting and applying the maritime lien for necessaries more broadly.41

A leading case taking the broader approach and affording deference to Congress is Equilease Corp v. M/V Sampson.42 In Equilease, the Fifth Circuit held that “furnishing” does not require the actual delivery of goods or services to a vessel because such a “physical delivery requirement would prevent intangible services useful to a vessel from being ‘necessaries’ under the Lien Act.”43 The Court acknowledged that if the Act’s purpose is to “encourage private investment in the maritime industry by protecting investors” then to hold that “furnishing” requires physical delivery
would defeat this purpose by “layering technicalities onto” and narrowing the Act’s interpretation. The Eleventh Circuit also recognized congressional intent when it interpreted the lien for necessaries broadly, granting a lien for necessaries to a shipyard that had made repairs on a vessel that, at the time, was not “in navigation.” The Court recognized that “Congress created maritime liens to protect both ships” and suppliers. The Court argued that “Congress could not have intended as the need for protection increased, the law’s protection would retract.”

Since 1920, the direction of the lien for necessaries has not changed. In 1988, Congress “revise[d], consolidate[d], and enact[ed] certain laws related to shipping definitions and maritime commercial instruments and liens as subtitle III of title 46.” Among the revisions was the deletion of “Chapters 313, 315 – Reserved” and the substitution of “Chapter 313-Commercial Instruments and Maritime Liens.” Additionally, Congress replaced the word “furnishing” with the word “providing.” However, the relevant House of Representative report states that this change should not “result in changes in substance, and therefore [it] should not impair the precedent value of earlier judicial decisions or other interpretations.” Therefore, in determining whether a supplier is entitled to a maritime lien for necessaries against a vessel, it is important to review the legislative history and original purpose of the lien, thereby adhering to prior judicial decisions. In this instance, the legislative history supports a broad interpretation.

II. An Overview of O.W. Bunker and Judge Forrest’s Ruling in *ING N.V. v. M/V Temara*.

a. The Rise and Fall of O.W. Bunker.

O.W. Bunker & Trading A/S, established in Denmark in 1980, was one of the world’s largest bunker intermediaries with operations in twenty-nine countries. O.W. worked with both vessel owners and charterers and local bunker suppliers to facilitate and arrange the purchase and delivery of bunkers to the vessel. A vessel owner or charterer would contract with O.W. for bunkers. Despite having the ability to physically supply bunkers to vessels, O.W. itself almost never did. O.W. worked through a chain of sub-contracts with third parties. Upon entering into a contract with a vessel owner or charterer to supply bunkers, O.W. would then subcontract with one if its subsidiaries. The subsidiary would then contract with a local supplier to fulfill the order. The physical supplier delivered the bunkers to the vessel and obtained a receipt signed by the master. O.W. would invoice the vessel owner or charterer and the local supplier would invoice O.W. or its subsidiary. Upon payment from the vessel owner or charterer, O.W. would pay the local supplier. There was a mark-up from the price charged by the physical supplier to the price charged by O.W. The difference between these two prices was O.W.’s profit.
The system worked until November 7, 2014 when O.W. Bunker & Trading A/S filed for bankruptcy in Denmark as a result of company fraud. It did not take long for O.W’s subsidiaries to follow suit, seeking bankruptcy protections in courts all over the world. The general insolvency of the O.W. network left many of the remaining parties in this chain of intermediaries unpaid and worried. This resulted in a number of competing claims filed worldwide by physical suppliers against the vessels and vessel owners. As the contractual supplier, O.W. Bunker had a claim against the vessel owners flowing from the supply contract. Given O.W. Bunker’s financial status, the local suppliers feared that they would become O.W. Bunker’s unsecured creditors and never fully recover. Therefore, the physical suppliers asserted a lien against the vessel itself, regardless of whether the owner or charterer had already paid O.W. To further complicate matters, in December 2013, a number of O.W. entities had assigned their rights in the bunker supply contracts with the vessels to ING Bank N.V. Such assignment prompted ING to assert a maritime lien of its own against the vessels of O.W. customers.

The vessel owners, now faced with multiple potential claims for payment, did not know which party to pay and were not going to pay several times for one delivery of bunkers. Moreover, the vessel owner feared that if it paid the wrong party the vessel would remain subject to an in rem arrest by another party asserting a claim. In response to competing claims, vessel owners filed interpleader actions. The question of which party is entitled to payment for the fuel is at issue in more than one hundred and fifty cases in the courts of the United States and elsewhere around the world. So far, only a handful of district courts have answered this question by reference to U.S. law. District courts in the Eastern District of Louisiana and the Southern District of New York have ruled in favor of O.W. [and ING Bank] because O.W. was privy to the contract with the ship owner or charterer. However, despite previous decisions in favor of O.W. within the Southern District of New York, Judge Katherine B. Forrest took a different approach.

b. Judge Forrest Rules that O.W. Bunker Is Not Entitled to a Maritime Lien for Necessaries and Does Not Contribute to the Overall Purpose of the Lien because it does not meet the “provided” portion of CIMLA.

ING Bank N.V. (“ING”) filed a number of cases asserting rights to the interpleaded funds due and payable to O.W. Bunker (“O.W.”) for the provision of bunkers of fuel oil to vessels in the United States District Court for the Southern District of New York. In each of the five cases addressed in the opinion for ING Bank N.V. v. M/V Temara et al., ING moved for summary judgment, alleging that O.W. Bunker had maritime liens for bunkers supplied to the vessels, and that O.W had validly assigned its rights to receive any money due pursuant to such liens to ING. Except where otherwise
indicated, the following is taken from the findings of fact by Judge Forrest in her opinion in the case of the *Temara*.\(^7\)

In each case, the charterer entered into a contract with O.W. for the supply of bunkers. That contract was between parties at arms’ length; it did not authorize O.W. to act as the vessel’s agent or representative in procuring bunkers. Afterwards, O.W. employed the services of one of its subsidiaries serving as a “bunker intermediary.” Shortly after O.W. and O.W. USA entered into an agreement, O.W. USA contracted with a local supplier to physically supply the bunkers to the vessel. According to the court, the record was silent as to O.W.’s knowledge of the contract between its subsidiary and the local supplier, and does not support that O.W. agreed to any terms of that contract. When the local supplier delivered, the vessel’s Chief Engineer signed a receipt and stamped it with the names of the charterer and vessel.

O.W. then issued an invoice to the vessel owner or charterer, stating that payment was to be made to ING Bank within thirty days. O.W.’s invoice made no reference to either the O.W. subsidiary involved or the local supplier. Meanwhile, the local supplier issued its own invoice to the O.W. subsidiary involved. That invoice made no reference to O.W. the parent or the vessel owner or charterer. Neither O.W. (or ING) nor the local supplier were ever paid on their invoices.

Judge Forrest applied *stricti juris* and denied ING’s motions for summary judgment on its claim to a maritime lien, and ruled that O.W. could not assert a maritime lien because it did not experience any loss or suffer financial risk and, therefore, did not meet the “provided” prong of the test under CIMLA.\(^8\) Judge Forrest acknowledged that courts in the past had granted a lien to various entities and intermediaries contracting with third parties for the provision of necessaries to a vessel.\(^9\) However, Judge Forrest argued that such an outcome is only warranted when the contract supplier has already paid its subcontractor.\(^10\)

### III. Analysis

Judge Forrest’s application of *stricti juris* and her position that intermediaries like O.W. Bunker do not serve the purpose of a lien for necessaries is contradicted by both case law and legislative history. The lien for necessaries has been around for centuries and has developed as a result of general maritime law. Its purpose is to encourage investment in vessels and the marine industry and established case law and legislative history support a broad construction to effectuate this purpose.\(^11\) CIMLA’s “provided” qualification should be interpreted broadly in accordance with established case law and legislative history and O.W. Bunker’s market success should persuade that its services constituted necessaries for which a lien is authorized by CIMLA.
a. CIMLA’s “provided” qualification should be interpreted broadly in accordance with established case law and legislative history

i. Judge Forrest misapplied stricti juris when interpreting the maritime lien for necessaries.

In her opinion, Judge Forrest misapplies stricti juris when interpreting the maritime lien for necessaries because established case law and legislative history call for a broad interpretation of the lien for necessaries. Judge Forrest recognizes that the goal of the lien for necessaries is to “facilitate maritime commerce by protect[ing]….. suppliers who in good faith furnish necessaries to a vessel.” Arising out of general maritime law, the lien balanced the interests of suppliers and shipowners to keep vessels active in trade. When courts began interpreting the lien too narrowly, Congress took action to broaden its scope by passing the Lien Act in 1910. Subsequent actions by Congress have been carried out with the same intent – to broaden and clarify the scope of the lien for necessaries so as to effectuate its purpose. As the maritime industry evolves, what is considered necessary likewise evolves and, in turn, how those necessaries are provided evolve. Furthermore, what is required to keep vessels active in the maritime industry is determined on a case-by-case-basis, accounting for the function of a particular vessel and the goods or services involved. Therefore, the lien for necessaries must be flexible and courts must interpret CIMLA broadly in order to account for changing conditions in the maritime industry.

ii. Even if the lien for necessaries was to be interpreted stricti juris, Judge Forrest misinterpreted it by creating her own definition of the term “provided.”

Judge Forrest misapplied stricti juris by creating a new definition of the term “provided” instead of adhering to the broad definition supported by case law and legislative history. Judge Forrest believes that the “key issue in determining whether O.W. Bunker has a maritime lien for necessaries is what the term ’provided’ means.” This is not an issue at all because the courts and Congress have already defined “provided” through their definition of “furnished.” The Lien Act of 1910 awarded a maritime lien to those who “furnished repairs, supplies or other necessaries, including the use of drydock or marine railway.” In 1920, Congress changed the wording to “any person furnishing repairs, towage, use of dry dock or marine railway, or other necessaries,… shall have a maritime lien” because it was frustrated by the court’s continued narrow interpretation of the Act. After this change, in an effort to effectuate Congress’ intent, courts interpreted “furnished” broadly and cautioned against “layering technicalities onto” the term to avoid preventing certain types of goods and services useful for the ship from being considered “necessaries” under the Lien Act.
In 1988, Congress re-codified the Ship Mortgage Act of 1920 and replaced the word “furnishing” with the word “providing.” Congress clarified that this change in wording does not change the substance or impair the precedent value of earlier judicial decisions. The term “furnished” has been interpreted broadly. Congress stated that “providing” means “furnishing.” Therefore, Judge Forrest was mistaken in searching for a precise definition of the term “provided.” She should have followed the broad definition of the term “furnished,” applied by previous courts. Instead, Judge Forrest defined “provided” as putting oneself at financial risk. Such a definition is unfounded and unsupported in prior case law and legislative history. The definition goes against the purpose of the lien for necessaries. In adding an extra layer onto “provided,” it risks discouraging private investment in the maritime industry by suppliers of valuable goods and services that may structure their transactions in the same way as O.W. Bunker.

Moreover, even if “provided” meant putting oneself in financial risk, it can hardly be said that O.W. did not take on risk in delivering the bunkers. As a party to the contract, if there was an issue with the delivery of bunkers to the vessel, the vessel owners or charterers would have a claim against O.W. Bunker, not the physical supplier. Additionally, O.W. sold the bunkers at one price but the rate of bunkers changes daily. The price of bunkers on the day where the contract was agreed upon and the price on the day of delivery could have been dramatically different and O.W. had to account for the difference. Finally, O.W. took on financial risk to supply the bunkers to the vessel because it was using all its resources to find the best price and best physical supplier to supply the bunkers. Clearly, O.W. meets the “provided” portion of CMLA.

b. The service that O.W. Bunker, and bunker intermediaries alike, provides is necessary because it is required for the vessel’s continued operation, as is evidenced by the widespread success of O.W. Bunker in the market place. The term “other necessaries” has also been interpreted broadly and expansively to effectuate the purpose of the lien for necessaries and “encourage the provision of goods and services that keep vessels commercially active.” Any goods or services that are provided to the vessel and required for the vessel to continue operation are considered “necessaries.” The term is limited to repairs and supplies “fit and proper for the use of a ship.” The test is whether what is furnished “is within the reasonable needs of the ship’s business.” In today’s maritime industry, a vessel’s success depends on increased efficiency and reliability. Any goods or services that decrease port time, increase speed and allow the vessel to be immediately turned around and put back onto sea qualify as “other necessaries” and those that supply them are entitled to a lien for necessaries. Therefore, O.W. Bunker, and bunker intermediaries alike, provide a necessary service to vessels by acting as a local
expert capable of delivering bunkers, economic, technical and safety support to “keep her out of danger and enable her to perform her particular function.”

O.W. contributes to the vessel’s continued operation by providing economic support to the vessel. O.W. monitors the daily changing price of bunkers and the most reliable sources of fuel according to the vessel’s needs and estimated time of arrival. This service cuts costs for ship owners and charterers because it saves them from expending their own resources for such endeavors and allows them to focus on the vessel’s voyage. In addition, O.W. structures its transactions to allow the vessel to move quickly and efficiently through the port and contribute to her quick turn around.

O.W. contributes to the vessel’s continued operation by providing technical support to the vessel. O.W. puts people in the field at each port. Therefore, it is capable of updating ship owners and charterers on any recent developments in environmental regulations or port restrictions. This information allows the vessels to plan accordingly and to prepare for entering and exiting various ports around the world. Moreover, O.W. is capable of helping the vessel comply with these requirements, allowing the vessel to be prepared and avoid delays or fines. Such specialized knowledge is crucial to the ship functioning efficiently and being able to continue moving so as to keep the flow of commerce open.

Finally, O.W.’s services keep the vessel “out of danger” by identifying the most reliable and secure sources of fuel in foreign ports. O.W. provides bunkers in a way that accounts for the differences in the people, logistics, politics, languages, currencies and the handling of money depending on the country. If a vessel is operating or trading in a more dangerous or higher risk port, O.W. leverages its local expertise to find the safest source of fuel for the vessel. Ultimately, this set up ensured that the delivery of fuel to the vessel went smoothly and the vessel could voyage on. The vessel’s needs are the driving factor behind a good or service qualifying as “necessary.” O.W.’s success in the market suggests that ship owners and charterers found this service convenient and helpful for business. Otherwise, vessel interests would have dealt directly with the physical suppliers and would have rejected the higher price, effectively a finder’s fee, charged by O.W.

**Conclusion**

The purpose of the maritime lien for necessaries is to encourage private investment in the shipping industry. The shipping industry is constantly evolving and the law must evolve with it in order to ensure an efficient flow of business and commerce. Judge Forrest misapplied stricti juris to the lien for necessaries. The lien must be
interpreted broadly to account for changes in the industry and the case law and legislative history support such an interpretation. Judge Forrest’s narrow and technical definition of “provided” is inconsistent with the overall purpose of the lien. Her definition discourages investment in the shipping industry by denying a lien for necessaries to whole group of suppliers providing necessaries or goods through transactions structured like those of O.W. Bunker. The market success of O.W. Bunker, and other fuel intermediaries, suggest that this could have a severe impact on the flow of commerce. Finally, O.W. Bunker did put itself at financial risk in providing bunkers to the vessels as is evidenced by its contracts with the vessel owners or charterers and the efforts it took in providing such resources to the vessels.

Judge Forrest’s decision is currently up on appeal in the Second Circuit. It should be noted that at least one other judge in the Southern District of New York has declined to follow Judge Forrest’s decision in the Temara. It will be interesting to see how these interpleader cases are decided in the future. As litigation continues, regarding O.W. Bunker, courts should consider the purpose of the maritime lien for necessities and the frustrations to the shipping industry that could ensue if bunker intermediaries like O.W. Bunker were denied a lien for necessities.

Endnotes
1 Chresanthe Staurulakis is a third-year law student at the University of Richmond School of Law in Richmond, VA. She received her B.S. in International Business with a concentration in Global Logistics and Transportation from the College of Charleston in Charleston, SC. Chresanthe hopes to incorporate admiralty law into her future practice. She would like to thank Professor John Paul Jones for his support and guidance. For questions or comments, the author can be reached at Chresanthe.Staurulakis@richmond.edu.
3 Id. at 3, stating that “stemmed” is another term for “delivered.”
4 Telephone Interview with Sam Hines, Senior Partner, KL Gates (Jan. 30, 2017).
6 See Liner Ships, WORLD SHIPPING COUNCIL. (July 2013), http://www.worldshipping.org/about-the-industry/how-liner-shipping-works, defining “liner service” as the transportation of goods by a vessel running regular routes on a fixed schedule.
7 Id. defining “tramp service” as the transportation of goods by a vessel trading on the pot market with no fixed schedule or itinerary.
8 Telephone Interview with Mark Newcomb, General Counsel, Zim Shipping (Feb. 9, 2017) (stating that even the largest, international shipping companies, capable of having their own bunkering offices within headquarters or “in house” suppliers, would still have to place fuel experts, buyers and sellers at every port in which they operate in the hopes of acquiring the same local knowledge as a fuel intermediary).
12 See Dampskibsselskabet Dannerbrog v. Signal Oil & Gas Co. of California, U.S. Wash. 1940, 60 S. Ct. 937, 310 U.S. 268, 84 L.Ed. 1197 stating that the origin of the maritime lien is the need of the ship to be given supplies and necessities to keep it going. It should be noted that “[A] maritime lien…..keep[s] ships moving in commerce while preventing them from escaping their debts by sailing away.”)
13 See Crimson Yachts v. Betty Lyn II Motor Yacht, 603 F. 3d. 864, 869 (11 Cir. 2010) (recognizing that “maritime liens have special features designed to protect persons who own, sail, and service ships from the unique risks associated with the shipping industry.”).
14 See Trans-Tec. Asia v. M/V HARMONY CONTAINER, 518 F.3d 1120, 1130 (9th Cir. 2008).
15 Id.
16 See generally Thomas J. Schoenbaum, 1 Admiralty & Mar. Law 9-1 (5th ed. 2015) (stating that “[A] maritime lien…..keep[s] ships moving in commerce while preventing them from escaping their debts by sailing away.”)
17 Mullane v. Chambers, 438 F.3d 132, 138 (1st Cir. 2006).
18 See G. Gilmore & C. Black, THE LAW OF ADMIRALTY §§ 9-2 & nn. 588 (1975) (stating that “the validity of the lien does not depend on possession or notice through filing so it is referred to as a secret lien” because it does not arise until the parties are in court.)
19 See Itel Containers Int’l Corp. v. Atlantictrafiik Express Serv. Ltd., 982 F.2d at 765, 768 (2d Cir.

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of the certainty necessary for smooth operation of
WL 6156320, 2016 U.S. Dis. LEXIS 113206, at 20
precise interpretation).

23 See Robert Force, ADMIRALTY AND MARITIME LAW 31–32 (2nd ed. 2013) (An action in rem is an action directly against the property that relates to the claim. Under this, suppliers can initiate an action in rem by “arresting” the vessel as long as it is subject to the court’s jurisdiction, and preventing the vessel from moving until the debt is paid).


28 See Gustavo H. Robinson, HANDBOOK OF ADMIRALTY LAW IN THE UNITED STATES 358 (1939).


30 U.S. CONST. art. III, § 2 (extend the judicial power of federal courts to include all cases of admiralty and maritime jurisdiction).

31 See Delos, supra note 10 at 269.

32 See Robinson, supra note 28 at 370.

33 See generally THE GENERAL SMITH, 17 U.S. (4 Wheat. 438 (1819)) (holding that “Where repairs have been made or necessaries furnished to a foreign ship or to a ship in a port of the state to which she does not belong, the general maritime law, following the civil law, gives the party a lien on the ship itself for his security and he may maintain a suit in rem in Admiralty to enforce his right. But in respect to repairs and necessaries in the port or State to which the ship belongs, the case is governed altogether by the municipal law of that state and no lien is implied unless it is recognized by state law”).

34 See Delos, supra note 11 at 270. The exception left it to the states to pass statutes protecting citizens who supplied goods and materials to vessels in commerce. This resulted in both the lien law of various states and the general maritime law under federal jurisdiction, which resulted in inconsistencies. The burden of which fell on the federal courts to construe both systems of laws.

35 See generally The Lottawanna, 88 U.S. 558 (1874) (arguing that “The Constitution must have referred to a system of law coextensive with and operating uniformly throughout the whole country. However, until Congress acts to establish uniformity, the states, so long as they do not interfere with basic principles of maritime law, are empowered to give lien status to maritime claims and they will be recognized and enforced in admiralty. Uniform law is better but not until Congress adopts the authority of the states to legislate.”).


37 See Equigale Corp. v. M/V Sampson, 793 F.2d 598, 602 (5th Cir. 1986).

38 See Gilmore and Black, §9-34 at 657-658.


41 See, e.g., The Western Wave, 77 F.2d at 698 (1935); The Artemis, 53 F.2d 672, 679 (S.D.N.Y. 1931); In Re Burton S.S. Co., 3 F.2d 1015, 1016 (D. Mass. 1925); The Nepost, 300 F. 981, 987 (D. Mass. 1924); rev’d on other grounds; The Susquehanna, 3 F.2d 1014, 1015 (D. Mass. 1923); The Henry S. Grove, 285 F. 60, 61 (W.D. Wash. 1922) (reflecting congressional dissatisfaction as the reason for broadening the scope of the Act).

42 703 F.2d 598 (5th Cir.1986).

43 Id. at 603.

44 Id.

45 See Crimson Yachts v. Betty Lyn II Motor Yacht, 603 F.3d 864 (11th Cir. 2010) (holding that a watercraft need merely to be capable of transportation on water to be a “vessel” subject to maritime liens).

46 Id. at 876.

47 Id.

48 See 102 Stat. 4375.


51 H.R. 918, 100th Cong. (2d Sess. 1988).


57 Id.

58 Id. at 6.

59 Id. At times, O.W. Bunker sub-contracted directly with local third-party suppliers.

60 Id. at 7.


62 Id.

63 Id.


67 Id. At least twenty-five interpleader actions have been filed in, or transferred to, the Southern District of New York.


72 See Update: ING Sells Its OW Bunker Debt, Could Prompt Physical Supplier Claims Surge, SHIP & BUNKER (Nov. 17, 2015), http://shipandbunker,
and/or a financial payment obligation between the


Bankruptcy and The Resulting Legal Issues


adjudication in a single proceeding).


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