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Securing Rights Against a Vessel or Maritime Property and Relief Therefrom

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“A ship may be here today and gone tomorrow, not to return for an indefinite period, perhaps never. Assets of its owner...within the jurisdiction today, may be transferred elsewhere or paid off tomorrow,” according to *Polar Shipping Ltd. v. Oriental Shipping Corp.*, 680 F.2d 627, 637 (9th Cir. 1982). Such is the problem that may face anyone entertaining any form of business within the maritime industry. As with most industries, contracts and business relationships often cross state and international borders. However, maritime law provides several unique remedies for protecting rights and enforcing obligations that arise through maritime dealings: vessel arrests and maritime attachments. Both are very powerful and relatively quick means of gaining leverage to enforce claims arising under maritime law. This article provides an overview of both and options for relief when facing a vessel arrest or maritime attachment.

When a claimant has an interest against a vessel owner or a vessel, they may choose to enforce those claims against not only the vessel owner but also the vessel itself. (See Federal Rules of Civil Procedure (Supplemental Rules for Certain Admiralty and Maritime Claims, Rule B)). A “maritime arrest” is the procedure for enforcing a claim or maritime lien against the vessel, otherwise known as *in rem*, which is Latin meaning “against the thing.”

Arresting a vessel is similar to arresting a person. It places the vessel under the control of the U.S. District Court that issues the Warrant of Arrest. Once arrested, the vessel cannot be moved, cargo cannot be loaded or unloaded, and



Photo by Lou Vest

the vessel cannot leave port without a court order permitting it to do such things or vacating the arrest.

A number of rights arising under maritime law can support an order to arrest a vessel. Claims for seaman’s wages, claims based on collisions or allisions, claims for salvage, and claims for providing “necessaries” (i.e., repairs or services) to a vessel can all provide a basis for arresting a vessel. Since vessels are capable of easily leaving the jurisdiction of the court, arresting a vessel is a very powerful, and relatively quick, way to compel vessel owners to answer for claims against them.

If a claimant believes it may have a claim against a vessel owner, it should first contact an attorney well-versed in assessing and bringing claims to arrest a vessel as the law is quite nuanced. The claimant should be prepared to support its claims with documentation such as invoices, bills of lading, or contracts, and will likely be asked to provide affidavits (i.e., signed and sworn

statements) from key personnel. Armed with such evidence, the claimant, by and through its attorney, will file a “Complaint in Limitation” (sometimes called a “Petition for Limitation”) in the admiralty court in whose jurisdiction the vessel is or will be located. The Complaint will name the vessel itself as the defendant in the case.

The court will determine if the Complaint is well-founded and whether the claimant has a bona fide right to arrest the vessel. This is determined by the court during an expedited hearing held at or near the time the Complaint is filed. If the court agrees that the arrest is warranted, it will issue an order and warrant to arrest the vessel. Importantly, the vessel owners may not even be made aware of the Complaint and potential risk of arrest until the vessel is actually arrested. This is usually preferable to claimants because it prevents the vessel owners from simply sailing to another port outside of the court’s jurisdiction. However, seasoned maritime attorneys have means to

monitor when a Complaint is filed and alert the vessel before the arrest is made.

If the court grants the order and issues a Warrant of Arrest, then the claimant must take the order and warrant to the U.S. Marshals office, along with a copy of the Complaint and supporting documents. The claimant must have sufficient knowledge of the vessel's location so that the U.S. Marshals can locate the vessel and the claimant will need to post a bond, the amount of which varies by jurisdiction.

Assuming all of the foregoing is achieved, then the U.S. Marshal will board the vessel, serve the vessel's master with a copy of all court documents, and post a copy of the Warrant of Arrest in the pilothouse and on the gangway. At that point, the vessel is "under arrest" and will be prohibited from nearly all activity without permission from the court.

Notably, most maritime nations have similar remedies and procedures for arresting a vessel to enforce a right against the subject vessel and/or the vessel owners. Of course, the details of the process will vary from country to country, and local maritime counsel should be consulted in each country where the claimant wishes to consider arrest.

After a vessel has been arrested, the vessel owners, or anyone claiming to have an ownership interest in the vessel, should make an appearance to the court via "answering" the Complaint or making a "limited appearance." Any person or entity appearing for the vessel has a right to a prompt hearing to challenge the vessel arrest. At the hearing, the claimant who sought and procured the arrest will have the burden to show why the arrest should not be vacated. In other words, the claimant will need to prove that their claim is likely to succeed against the vessel.

Again, documentation will be critical to proving the existence of the claim against the vessel, but the burden on the claimant is not as high as proving their ultimate right to recovery at trial. The claimant should

be prepared to present witnesses who will be subject to cross-examination by the vessel owner or, presumably, its counsel. Following the hearing to vacate the arrest, the court will either grant the request to vacate the arrest or deny it. If denied, the arrest will remain and the claimant secures further leverage for obtaining non-court ordered satisfaction on its claim.

Even if the court refuses to vacate the arrest, the vessel owner may still get the vessel released from arrest by either posting a bond, entering into a "Letter of Undertaking" with the claimant, or providing some other form of security. If a vessel is arrested, vessel owners should immediately put their insurer (typically the Protection and Indemnity (P&I) Club) on notice of the arrest. If the court denies the vessel owner's request to vacate the arrest, then the vessel owner's insurer may agree to enter into a Letter of Undertaking with the claimant whereby the claimant agrees to release the vessel from arrest as long as the vessel owner agrees to submit to the jurisdiction of the court that issued the Warrant of Arrest and to pay the judgment ordered by the court or any sum negotiated and agreed to between the parties.

A savvy claimant will require that the Letter of Undertaking fully cover their entire potential claim before agreeing to release the vessel. Once a Letter of Undertaking is agreed to and executed by the parties, the vessel is permitted to carry on all operations as if the arrest never occurred (and thus earn revenues that could potentially be used to pay the claim). The Letter of Undertaking stands as security for the claim in place of the arrested vessel.

Alternatively, the vessel owners and the claimant may enter into any other security agreement which otherwise secures the claimant's claim, thus allowing the claimant to release the vessel. Such alternatives include cash deposits with the court, bank guarantees, and surety bonds. The amount of security needed to release the vessel varies on the circumstances

but is usually approximately 150% of the claim's value. Of note, a vessel owner who feels that the vessel arrest was wrongful may bring a claim for Wrongful Arrest against the claimant. Thus, it is critical to assess the strengths, weaknesses, and cost concerns when considering arresting a vessel.

Another option for securing a maritime claim is to assert a maritime lien against either the vessel or other maritime assets. (See Federal Rules of Civil Procedure (Supplemental Rules for Certain Admiralty and Maritime Claims, Rule C)). Claimants may be protected by operation of asserting a maritime lien and obtaining a maritime attachment against the vessel's cargo or other maritime property. Under the process of maritime attachment, when a maritime defendant cannot be found or served with enforceable legal process to bring the defendant into court but the defendant's maritime property exists within the court's jurisdiction, the court may permit the claimant to obtain a Warrant of Attachment against any of the defendant's property that may be found within the geographical jurisdiction of the court.

The attachment arises from a recognized maritime lien. Depending on the type of lien, a maritime lien may attach to a vessel's electronics, furniture, boats, fishing gear, certain types of fishing rights and permits, machinery, spare parts, fuel and other equipment, cargo, fish, property that has been salvaged from navigable waters, and even the vessel itself as an alternative to arresting the vessel. Importantly, because the purpose of maritime attachment is to ensure jurisdiction and security for a maritime claim, the property being attached does not necessarily need to relate to the type of claim. In other words, a claimant may arrest cargo or other maritime property that is unrelated to the claimant's claims.

The process for obtaining and executing a Warrant of Attachment against cargo or maritime property is

very similar to the process for arresting the vessel itself. Once the cargo or other maritime property is attached by the U.S. Marshals, it is put under the control of the U.S. District Court that issued the Warrant of Attachment and the property cannot be taken outside of the district, sold, moved, operated, or used without a court order permitting the defendant property owner to take such actions.

As with vessel arrests, Warrants of Attachment are often obtained and executed without the defendant property owner even knowing about them until they are executed and the property has been attached. In response, the defendant property owner is entitled to a prompt hearing to challenge the attachment. If the court denies the request to vacate the attachment, the claimant and defendant may agree to any other form of security

to secure the claimant's claim in lieu of the attachments.

As one might imagine, the implications of arresting a vessel or attaching cargo or other maritime property can be far-reaching and are an undoubtedly powerful tool for obtaining satisfaction on a claim arising under maritime law. However, this article provides merely an overview of some of the available options and procedures. If considering arresting a vessel or attaching cargo or maritime property, claimants should consult with counsel experienced with this area of law to thoroughly consider all options and potential risks.

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