



# Maritime Law Collection Issues

CLLA National  
Convention

May 19, 2022

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# CRYSTAL SERENITY





# GENERAL CONCEPTS

- Rule 9(h) Federal Rules of Civil Procedure
- Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions

Rule B. In Personam Actions: Attachment and Garnishment

Rule C. In Rem Actions



# General Concepts (contd.)

- 46 U.S.C. Sec. 31341 *et seq.* *Maritime Liens*
- 46 U.S.C. Sec. 31322, 31325 & 31326 Preferred Mortgages



# PRIORITY OF MARITIME LIENS

- Expenses of justice while the vessel is in *custodia legis* after the vessel's *in rem* arrest. Although "*custodia legis*" expenses are frequently referred to as the highest class of maritime liens, they actually do not give rise to a maritime lien, but instead are given their priority status as a cost of court.
- Seamen's liens for wages, maintenance and cure.
- Salvage and general average liens.
- Maritime tort liens, which include nearly all maritime torts, such as collision, personal injury, death or cargo damage.
- Contract liens.
- State-law-created maritime liens. Due to federal supersession of state maritime lien law under 46 U.S.C. § 31307, this is a relatively limited category of claims, many of which overlap with the classes of maritime lien claims established under federal law, with a notable exception being state-conferred liens for vessel construction.



## PRIORITY OF MARITIME LIENS (contd.)

- Tax claims.
- Non-maritime liens, including ship mortgages that have not attained “preferred” status under The Commercial Instruments and Maritime Liens Act (“CIMLA”), state ship mortgages and security interests perfected under UCC Art. 9. *United Shipping Svcs. Three, Inc. v. U.S. Express Lines, Ltd.*, No. 98-950, 2002 WL 1773041, at \*2 (E.D.Pa. 2002).
- Maritime claims that are not secured by maritime liens.



# What Creates a Lien on a Vessel

- Mortgages
  - Self Help/repossession
  - Foreclosure/breach of mortgage
  - Arrest and auction
- Necessaries/Goods
  - Fuel
  - Dockage
  - Crew
  - Maintenance
- Collisions, Allisions and damage caused by the Vessel



## Rule B Attachments


- Federal Rules of Civil Procedure Supplementary Admiralty Rules
  - Unique to maritime law
  - Available if Defendant can no longer be found in the federal judicial district where action was commenced
  - Available on an *ex parte* basis
- Attachable Assets
  - Traditional forms of Property
    - Bank accounts, bunkers, debts
- Electronic Funds in possession of intermediary banks NOT attachable





# Other Vessel Related Collection Issues

- Brokerage
  - Collection of commissions
- Insurance
  - Difficulty in binding coverage
  - Duty of utmost good faith



# Wire Fraud in the Purchase and Sale of Yachts

- Duty to protect the client's money
- Duty to protect account details
- Steps to be taken prior to wiring money



# Transportation issues

- Delays in shipping and compliance with contractual terms
- Force Majeure clauses
- Impact of COVID



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# MARITIME ARBITRATION

- Federal Arbitration Act
- 9 U.S.C. Sec. 1 *et seq.*
- United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards
- 9 U.S.C. Sec. 201 *et seq.*



## Maritime Arbitration (contd.)

- London Court of International Arbitration
- International Chamber of Commerce
- Society of Maritime Arbitrators (N.Y)
- Maritime Arbitration Assoc. of the United States