

Maritime Liens for Oilfield Service

Emile J. Dreuil, III
Slattery, Roberts & Marino



Topic Introduction

In 1997, the U.S. Fifth Circuit held that a supplier of drilling materials to a drilling rig had a maritime lien under the Federal Maritime Lien Act against the rig. The court found that such provisions constituted “necessaries” to a “vessel” sufficient to give rise to a maritime lien.

-- *Trico Marine Operators v. Falcon Drilling Co.*, 116 F.3d 159 (5th Cir. 1997)

- Case expanded maritime liens to include oilfield operations conducted on drilling vessels.
- Affects interest of oilfield operators who routinely conduct operations on drilling rigs or other vessels.

What is Maritime Law?

- To give rise to a maritime lien, the occurrence out of which the liability arose must be governed by “maritime law.”

- Two aspects of maritime law:
 - (i) Jurisdictional**
 - Whether admiralty court can exercise its jurisdiction over the dispute.

 - (ii) Substantive**
 - Application of maritime law (jurisprudence, statutes, etc.) to dispute.

What is Maritime Law?

➤ Maritime Jurisdiction (tort disputes)

The wrong must:

- (i) occur on or over navigable waters; and
- (ii) bear a significant relationship to a traditional maritime activity

-- *Executive Jet Aviation Inc. v. City of Cleveland*, 409 U.S. 249 (1972)

What is Maritime Law?

➤ **Maritime Jurisdiction (contract disputes)**

The contract must:

“relate to a ship in its use as such, or to commerce or navigation on navigable waters, or to transportation by sea or to maritime employment.”

-- Steven F. Friedell, 1 Benedict on Admiralty § 182 (7th rev ed. 1999)

What is Maritime Law?

➤ **Substantive Maritime Law**

Distinct body of law governing questions relating to thing “maritime” in character.

- Maritime commerce
- Marine navigation
- Shipping
- Sailors
- Transportation of passengers and goods by sea
- Marine recreation
- Maritime liens

What is a Maritime Lien?

❖ Definition of a Maritime Lien

- “A maritime lien is a special property right in a vessel, which gives the lien-holder priority over other claimants as well as the ability to recover against the value of the vessel in an *in rem* action.”
- “A maritime lien is a non-possessory property right of a non-owner in a vessel, its freight, cargo or other maritime property giving the lienholder the right in admiralty courts to have the property sold and the proceeds distributed to the lienholder to satisfy an *in rem* debt of the property.”

-- *Effjohn Int’l Cruise Holdings, Inc. v. A & L Sales*, 346 F.3d 552 (5th Cir. 2003)

What is a Maritime Lien?

❖ Purpose of a Maritime Lien

Maritime lien law arose from a need to:

- encourage growth in a failing merchant marine industry
- facilitate the supply of “necessary services” to vessels whose owners could not make cash payments at time of service

[continued]

- make private investment in shipping industry more attractive -- protects suppliers by providing credit against vessel's value
- balance interest of materialmen and vessel owners
- keep vessels active in trade and commerce while prohibiting vessel from avoiding debts by merely sailing away

What is a Maritime Lien

❖ The Vessel as Wrongdoer

- Vessel, not the owner, is treated as wrongdoer
- converts the vessel itself into obligor
- allows the supplier to proceed against vessel directly in court

What is a Maritime Lien?

❖ Advantage

- Bring *in rem* action in federal admiralty court
- Easier/more convenient to institute than ordinary lawsuit against vessel owner
- Recordation not required (except ship mortgages)
- Possession of vessel not required
- Attaches and perfected immediately when service provided
- Not extinguished by transfer of ownership

What is a Maritime Lien?

❖ Attachment to Vessel and Equipment

- furnishings, appurtenances, and other equipment
- electronics
- gear
- spar parts
- fuel

What is a Maritime Lien?

❖ Type of Maritime Liens

- Wages of master and crew
- Salvage operations
- Damages for breach of charter party agreements
- Preferred ship mortgages
- Maritime torts (includes personal injury, death and collision claims)
- Damage or loss of cargo
- Unpaid freight and demurrage
- **Contracts for repair, supply, towage, pilotage, and other “necessaries” under Federal Maritime Lien Act.**

Liens for “Necessaries”?

The Federal Maritime Lien Act (46 U.S.C. § 31342(a)) provides:

“a person providing necessaries to a vessel on the order of the owner... has a maritime lien on the vessel” and “may bring a civil action in rem to enforce the lien.”

Essential elements:

- (i) the supply of “**necessaries**”
- (ii) to a “**vessel.**”

Liens for “Necessaries”?

❖ What are “Necessaries”?

Defined by federal statute to include: “repairs, supplies, towage, and the use of a dry dock or marine railway.”

-- 46 U.S.C. § 31301(4).

Liens for “Necessaries”?

[continued]

- Courts interpret broadly
- Under Fifth Circuit law, necessaries encompass most goods or services that are:
 - (i) useful to the vessel,
 - (ii) keep her out of danger, and
 - (iii) enable her to perform her particular function

-- *Trico Marine Operators, Inc. v. Falcon Drilling Co.*, 116 F.3d 159 (5th Cir.1997)

Liens for “Necessaries”?

[continued]

Necessaries have also been described as:

“things that a prudent owner would provide to enable a ship to perform well the functions for which she has been engaged ... and it is the present, apparent **want of the vessel**, not the **character of the thing supplied**, which makes it a necessary.”

-- *Equilease Corp. v. M/V Sampson*, 793 F.2d 598 (5th Cir. 1986)

Liens for “Necessaries”?

[continued]

- May include money, labor and skill, personal services, and materials
- Need not be “absolutely indispensable”
- Even goods and services convenient or useful to the vessel may be “necessaries”

Liens for “Necessaries”?

[continued]

- Have included such things as:
 - supply of fuel to vessels
 - taxi fare for crewmembers to get to the vessel
 - stevedoring services
 - lease of dynamic positioning system on drilling rig
(*In re Underwater Completion Team, Inc.* 34 B.R. 206 (Bkrctcy. W.D. La. 1983))
 - lease of pipe loaded oil onto vessel (*Clubb Oil Tools, Inc. v. M/V George Vergottis*, 460 F. Supp 835, 1988 AMC 556 (S.D. Tex. 1978))

Liens for “Necessaries”?

❖ What is a “Vessel”?

The question of what qualifies as a vessel is an essential element for the application of maritime liens.

-- *Pleason v. Gulfport Shipbuilding Corp.*, 221 F.2d 621 (5th Cir. 1955)

Liens for “Necessaries”?

[continued]

➤ **Statutory Definition (1 U.S.C. § 3)**

“[E]very description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.”

Liens for “Necessaries”?

[continued]

➤ Jurisprudence

Stewart v. Dutra Constr. Co., 543 U.S. 481 (2005)

- Broadly construed term “vessel” to include “any watercraft **practically capable** of maritime transportation, regardless of its primary purpose or state of transit at a particular moment.”

Liens for “Necessaries”?

[continued]

➤ Jurisprudence

Lozman v. City of Riviera Beach, 568 U.S. ____ (2013)

- A structure does not fall within the statutory definition of a vessel “unless a **reasonable observer**, looking into the [structure’s] physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water.”

Liens for “Necessaries”?

➤ **Fixed Platforms and Floating Production Facilities are not Vessels.**

- permanently moored to the seafloor
- would be time and cost prohibitive to move.

Citing *Stewart v. Dutra*, the Fifth Circuit stated: “a watercraft is not ‘capable of being used for maritime transport’ in any meaningful sense if it has been **permanently moored or otherwise rendered practically incapable of transportation or movement.**”

-- *Mendez v. Anadarko*, 466 Fed. Appx. 316 (5th Cir. 2012)

Floating Production Facilities (Non-vessel under law)

Spar



Tension Leg Platform



Fixed Platform (Non-vessel under law)



Liens for “Necessaries”?

Other cases finding spars to be non-vessels

- *Channel v. Grand Isle Shipyard*, 2001 WL 515220 (E.D.La. 2001)
- *Fields v. Pool Offshore, Inc.*, 182 F. 3d 353 (5th Cir. 1999)
- *Moore v. Bis Salamis*, 2010 WL 3745023 (E.D. Tex. 2012)
- *Richardson v. Kerr-McGee*, 08-1074, 2011 WL 2565315 (E.D. La. June 28, 2011)
- *Mizell v. BP Am. Prod. Co.*, No. 07-185, 2008 WL 872279 (S.D. Miss. March 26, 2008)
- *Case v. Omega Natchiq, Inc.*, No. H-08-0835, 2008 WL 2714124 (S.D. Tex. July 10, 2008)

Drilling Rigs / Oilfield Vessels (Vessel under law)



Liens for “Necessaries”?

➤ Drilling Crafts are Vessels

A “drilling craft was a vessel because it was a ‘highly mobile unit’ deployed to nineteen different sites over two years.

-- *Manuel v. P.A.W. Drilling & Well Serv., Inc.*, 135 F.3d 344 (5th Cir. 1998)

Liens for “Necessaries”?

[continued]

“Submersible drilling barge was ‘**highly mobile**’ due to routine relocation.”

“Unlike work platforms, submersible drilling rigs are moved on a **regular basis**, which distinguishes them from work platforms and qualifies them as vessels in navigation.”

“Rigs and other drilling structures that are intended to be moved **frequently** are classified as vessels.”

-- *Colomb v. Texaco, Inc.*, 736 F. 2d 218 (5th Cir. 1984)

Liens for “Necessaries”?

[continued]

Fifth Circuit distinguished work platform from drilling rig because there was **“no intention to move the platform on a regular basis, as is done with a submersible drilling rig.”**

-- *Blanchard v. Engine & Gas Compressor Svcs. Inc.*, 575 F. 2d at 1143 (5th Cir. 1978)

Liens for “Necessaries”?

➤ Discussion of *Stewart v. Dutra*

Facts

- Worker injured on dredge and brought Jones Act claim
- Structure at issue was a dredge, named the “Super Scoop”
- Used to remove silt from a trench in the Boston Harbor
- Had no engine or means of self-propulsion
- Navigated by pulling its anchors and cables
- Moved “once every couple of hours, covering a distance of 30-to-50 feet each time.”

Liens for “Necessaries”?

The Super Scoop



Liens for “Necessaries”?

Holding

- The dredge was a vessel because it “was not only ‘capable of being used’ to transport equipment and passengers over water—it was so used.”
- Court noted in dicta that structures that are “moored to the shore in a semi-permanent or indefinite manner” have been “taken permanently out of the water as a practical matter” and do not “remain vessels merely because of the remote possibility that they may one day sail again.”

Liens for “Necessaries”?

➤ Discussion of *Lozman v. City of Riviera Beach*

Facts

- Court considered whether a floating houseboat was a vessel
- House was moved four times in seven years
- Had no engine/had to be towed
- Was docked at marina
- Plaintiff Lozman failed to pay certain marina fees and damages for trespass, so maritime lien on structure was brought under Federal Maritime Lien Act

Liens for “Necessaries”?

Lozman’s Houseboat



Liens for “Necessaries”?

Holding

Supreme Court focused on the term “transportation” in the statutory definition of vessel where it states that structure must be “capable of being used...as a means of transportation on water.”

Held that the definition of transportation must be applied in a **practical**, as opposed to a **theoretical**, way. “[T]ransportation involves the ‘conveyance’ (of things and persons) from one place to another.”

Liens for “Necessaries”?

[continued]

A structure does not fall within the statutory definition of a vessel “unless a **reasonable observer**, looking into the [structure’s] physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water.”

Features of Lozman’s floating home could not “lead a reasonable observer to consider it designed to a practical degree for transportation on water.”

Conclusion

- The Fifth Circuit construed “necessaries” broadly to include the supply of oilfield materials in connection drilling operations on a drilling rig (a vessel).
- If contractor supplies oilfield services/materials to drilling rig, drillship, etc., it may give rise to maritime lien against the vessel.

Note

The procedure used to enforce a maritime lien against a vessel in federal admiralty court is beyond the scope of this overview presentation. Special rules related thereto can be found in Rules A – E of the Supplemental Federal Rules of procedure for Admiralty and Maritime Claims.