

AACNI LAW OFFICES

BARCELONA - MALAGA - MARBELLA - MADRID

SHIPARRESTED.COM *Maritime Law Seminar* *MARSEILLE 2006*

Subject: New Spanish framework on maritime liens

Lecturer: Felipe Arizon, Attorney-at-Law (SPAIN) LL.M (Soton) AACNI Partner.

AACNI ABOGADOS

BARCELONA – MALAGA – MARBELLA - MADRID

- Index of seminar:
- Maritime liens in Spain, a practical scenario.
- Comparative law seminar & discussions





SHIPARRESTED.COM
MARSEILLE 2006



The ship GLORIA K, a bulk carrier (Canary I flagged) has been arrested by ship suppliers in CADIZ (SPAIN). Her current market value is 2,500.000 USD. You have been asked legal advise under your jurisdiction as to the position of the bank in respect to the enforcement and recovery of their moneys from the ship auction.

You appear within the proceedings and the ship faces the following scenario of claims

AACNI LAW OFFICES



SHIPARRESTED.COM
MARSEILLE 2006



- - The former owners of the ship are Messrs BADIA & CO.(SPAIN).
- - The current owners of the ship are Messrs ARIZON HOUSE SHIPPING (LIBERIA), they bought the ship in June 2006.
- - The voyage charterers of the ship are Messrs. EDWARD KUTZESNOV (LATVIA).
- - There are other claimants as Messrs OZKAN whom supplied the ship with materials and spare parts for 500.000 EUR invoicing this to the manager of the ship, invoice signed by the Master. (TURKEY). The invoice is dated March 2006.
- - Before the ship entered into the port of Genoa in March 2006, she needed the assistance of the salvage Co Messrs KLEIS & CO (DENMARK), which resulted in an amount awarded under LLOYDS' OPEN FORM of 400.000 EUR.
- - The ship repair bill rises to 300.000 EUR.
- - In such salvage two crew members got severely injured in the amount of 150.000 EUR.



SHIPARRESTED.COM
MARSEILLE 2006



- - The ship has a claim pending in conversion for 1.000.000 EUR in favour of the charterers MESSRS KUTZESNOV dated 10 June 2006, incurred at disport of the last voyage prior to undertaking repairs, for having delivered the cargo without production of the bills of lading.
- - The conservatory costs/fees until the auction rises to 200.000 EUR.
- - The bank, Messrs HENRI RAJJAR & BROTHERS & CO (Geneva) request of assistance in advising their way to settle their claim on the mortgage for 3.000.000 USD.
- Total claims; 2.550.000 EUR plus 3.000.000 USD of the bank.



SHIPARRESTED.COM
MARSEILLE 2006



- **Article 13 - Scope of application**

- **781.** Unless otherwise provided in this Convention, its provisions shall apply to all seagoing vessels registered in a State Party or in a State which is not a State Party, provided that the latter's vessels are subject to the jurisdiction of the State Party.
- **792.** Nothing in this Convention shall create any rights in, or enable any rights to be enforced against, any vessel owned or operated by a State and used only on Government non-commercial service.

- **Ecuador(a)16.III.2004**
- **Estonia(a)7.II.2003**
- **Monaco(a)28.III.1995**
- **Nigeria(a)5.III.2004**
- **Russian Federation(a)4.III.1999**
- **Saint Vincent and the Grenadines(a)11.III.1997**
- **Spain(a)7.VI.2002**
- **Syrian Arab Republic(a)8.X.2003**
- **Tunisia(r)2.II.1995**
- **Ukraine(a)27.II.2003**
- **Vanuatu(a)10.VIII.1999**



SHIPARRESTED.COM
MARSEILLE 2006

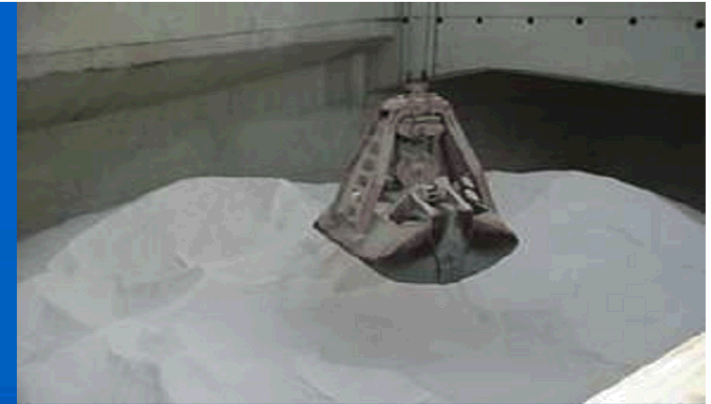


- **1. Please advise as to the position of priority of maritime liens and claims under your jurisdiction.**

- **ART 4.**
- **(a) claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;**
- **(b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;**
- **(c) claims for reward for the salvage of the vessel;**
- **(d) claims for port. canal. and other waterway dues and pilotage dues;**
- **(e) claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.**



SHIPARRESTED.COM
MARSEILLE 2006



- **Article 5 - Priority of maritime liens**
- **1. The maritime liens set out in article 4 shall take priority over registered mortgages, "hypothèques" and charges, and no other claim shall take priority over such maritime liens or over such mortgages, "hypothèques" or charges which comply with the requirements of article 1, except as provided in paragraphs 3 and 4 of article 12.**
- **2. The maritime liens set out in article 4 shall rank in the order listed, provided however that maritime liens securing claims for reward for the salvage of the vessel shall take priority over all other maritime liens which have attached to the vessel prior to the time when the operations giving rise to the said liens were performed.**



SHIPARRESTED.COM
MARSEILLE 2006



- **Article 7 - Rights of retention 42**
-
- **1. Each State Party may grant under its law a right of retention in respect of a vessel in the possession of either:**
 - **(a) a shipbuilder, to secure claims for the building of the vessel; or**
 - **(b) a shiprepairer, to secure claims for repair, including reconstruction of the vessel, effected during such possession.**
- **2. Such right of retention shall be extinguished when the vessel ceases to be in the possession of the shipbuilder or shiprepairer, otherwise than in consequence of an arrest or seizure.**



SHIPARRESTED.COM
MARSEILLE 2006



- **The Charterer? 1.000.000 EUR**
 - **The suppliers? 500.000 EUR**
 - **The salvage Co? 400.000 EUR**
 - **The Bank? 3.000.000 USD**
 - **The crew? 150.000 EUR**
 - **The repairer? 300.000 EUR**
 - **The costs of 200.000 EUR**

 - **Result, the Bank will recover 1,750.000 out of the ship proceed, to which we have to deduct LAWYERS FEES.**
- not PRIVILEDGED**
not PRIVILEDGED
yes PRIVILEDGED n° 1
yes PRIVILEGE n° 3
yes PRIVILEDGED n° 2
yes PRIVILEDGED ART1600 cc ?
not PRIVILEDGED but
deductible from proceeds. ART
12.2



SHIPARRESTED.COM
MARSEILLE 2006



MAIN CHANGES FROM 1926 BRUSSELS CONVENTION TO UN 1993 CONVENTION:

- SHIP SUPPLY CLAIMS ARE NO LONGER MARITIME LIENS
- THE PROCEDURE TO UNDERTAKE THE AUCTION IS CLEARER
- BETTER AND MORE DETAILED REGULATION OF CHANGE OF REGISTRY- OWNERSHIP
- THE MARITIME LIENS COMPREHEND THOSE ARISING FROM "Article 4 – Maritime liens "Each of the following claims against the owner, demise charterer, manager or operator of the vessel shall be secured by a maritime lien on the vessel: ...WHEREAS 1926 DID NOT REFER TO THEM. DIFFERENCE BETWEEN DEBTOR AND OWNER.
- All maritime liens have a validity of one year, not subject to interruption, whereas 1296 had an extension of 3 years in case the ship could not be arrested at the relevant jurisdiction.