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**Bunker Claims by Third Parties**



**Raymond Sun 孙立华**

Managing Director

SCB Management Consulting

(Shanghai) Co Ltd

[raymond.sun@scbmcs.com](mailto:raymond.sun@scbmcs.com)

# Bunker Claims by Third Parties

## 第三方燃油索賠

### 3<sup>rd</sup> party claims from:

- **sub-charterers for the ownership of bunkers**  
下租家主張燃油所有權
- **suppliers for non-payment**  
供應商主張未付款項

# Claims over the ownership of bunkers 燃油所有權的主張

**3<sup>rd</sup> party claims from: *sub-charterers for the ownership of bunkers***

**On delivery and during the currency of time charter: *Charterers***

交船及期租期以內：期租人

**On re-delivery: *Owners***

還船時：船東

***“take over and pay for all fuel” (Cls 2 & 3 or 9 for NYPE 93)***

# Claims over the ownership of bunkers 燃油所有權的主張

**Problem: when early delivery / vessel withdrawn**

**問題：提前還船/撤船時所有權歸屬問題**

**May not the Owners' assets (*The Saetta* [1993] 2  
*Lloyds Rep* 268 and *The Span Terza* [1987] 1 *Lloyds*  
*Rep* 119 HL)**

# Claims over the ownership of bunkers

## 燃油所有權的主張

### What to do by Owners?

**Amend the re-delivery clause to state “*whether it occurs at the end of the charter period or on earlier termination of this charter*”.**

修改還船條款

# Claims by bunker suppliers for non-payment 供應商主張未付款項

## Basis of the claim 索賠依據

1. retention of title clause provided for in the  
standard terms and conditions

標準條款下所有權保留條款

owner was protected as it had received the bunkers  
in good faith without notice of any third party claims  
to the bunkers.

*The Fesco Angara [2011] 1 Lloyd's Rep 61*

# Claims by bunker suppliers for non-payment 供應商主張未付款項

## Ex. 舉例

*“The Seller retains title to the Bunker Oil delivered to the Vessel until the Invoice has been paid in full in so far as the Seller has this right according to the law of the place of delivery or according to the law of the Vessel’s flag state or according to the law at the location where the Vessel is found.”*

# Claims by bunker suppliers for non-payment 供應商主張未付款項

**2. Are owners a party to the bunker contract if the invoice is addressed to them as well as charterers**  
船東是否是燃油供應合同主體問題

- **invoice / delivery receipt addressed to “*the master, owners, charterers and the vessel*”.**

- **Insufficient under English law**



# Claims by bunker suppliers for non-payment 供應商主張未付款項

## 3. maritime lien against the vessel

對於船舶的海事留置權

- **No maritime lien under English law**

英國法不適用

- **Followed by most countries but USA**

美國例外

# Maritime lien against the vessel in US

## 船舶海事留置權在美國的適用

### The US Maritime Lien Act (“MLA”)

**1. Unpaid bunker supplier has a maritime lien against the vessel where the bunkers were ordered by “*a person authorized by the owner*”.**

船東授權

**2. An officer or agent appointed by a charterer is “*presumed to have authority to procure necessaries [bunkers] for the vessel*”**

租家指定

# Maritime lien against the vessel in US

## 船舶海事留置權在美國的適用

**3. Does US law apply? “choice of law” – the most closely connected law should apply:**

**法律選擇、適用—最密切聯系法律**

- **Where the bunkers were stemmed. 加油地**
- **The vessel’s flag. 船旗國**
- **The domicile of the bunker supplier and the Owners. 燃油供應商和船東住所地**
- **The place of the contract. 合同簽訂地**

# Maritime lien against the vessel in US

## 船舶海事留置權在美國的適用

- **Accessibility of a foreign forum to hear the dispute.** 外國法院是否有管轄權
  - **The law of the forum.** 管轄法院地法律
  - **The owners' base of operations.** 船東主要營業地
- If no connection with the US then likely US law not apply**

若與美國無聯系，美國法律可能不適用

# Maritime lien against the vessel in US

## 船舶海事留置權在美國的適用

**If Foreign law:**  
外國法律適用問題

**whether any contract between the bunker supplier  
and the owners; or  
whether the foreign law allows for a maritime lien.**

*Note: inconsistencies in the eleven different federal  
court “circuits” in the US.*

# Maritime lien against the vessel in US

## 船舶海事留置權在美國的適用

**If US law and the MLA to apply, possible to rebut the presumed authority of charterers if :  
美國法適用下可能存在的抗辯**

- **bunker supplier knew that the charterer had no authority to bind the vessel and**
- **the vessel owner expressly precluded the charterer from creating any liens against the vessel.**

# Maritime lien against the vessel in US

## 船舶海事留置權在美國的適用

### Case: 案例

*Mv C D, arrested in Mobile, Alabama, 2.5 years after the supply. CLOU 1M.*

# Maritime lien against the vessel in US

## 船舶海事留置權在美國的適用

**What to do by Owners prior to the bunker supply?**

加油前，船東可以

**1. An anti-lien clause similar to that of clause 18 of NYPE form**

反留置條款

*“Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the owners in the vessel”*



# Maritime lien against the vessel in US

## 船舶海事留置權在美國的適用

Addition, as suggested by BIMCO

*“In no event shall Charterers procure, or permit to be procured, for the vessel, any supplies, necessaries or services without previously obtaining a statement signed by an authorized representative of the furnisher thereof, acknowledging that such supplies, necessaries or services are being furnished on the credit of Charterers and not on the credit of the Vessel or of her Owners, and that the furnisher claims no maritime lien on the Vessel therefore”*

# Maritime lien against the vessel in US

## 船舶海事留置權在美國的適用

**2. Require charterers to advise details of each bunker stem ordered so that owners may, prior to the supply, put the bunker supplier on notice that owners will not be responsible for same**

要求租家在加油前提供加油詳情  
通知燃油供應商

# Maritime lien against the vessel in US

## 船舶海事留置權在美國的適用

### 3. Masters to stamp the bunker delivery receipt: bunkers are not for the account of the ship; that no lien or any claim against the vessel / owners 收據印章

The goods and/or services being hereby acknowledged,  
receipted for, and/or ordered are being accepted and/or  
ordered solely for the account of charterers

Messrs.....of.....and not for  
the account of said ship or her owners. Accordingly, no  
lien or other claim against said ship can arise therefrom.

# Maritime lien against the vessel in US

## 船舶海事留置權在美國的適用

**What to do by Owners prior to the bunker supply?**

**Caution: has to be done prior to the stem.**

加油前需謹慎

**Problem: what if suppliers apply another stamp over  
Master's ?.....**

可能存在的問題.....

# Maritime lien against the vessel in US

## 船舶海事留置權在美國的適用

**What to do by Owners if the vessel is arrested?**

**被扣船了：擔保；費用；早期和解**

- **to put up security: Cash deposit if the bunker supplier refuses Club LOU**

- **Legal costs in the US are not recoverable even if owners are successful in defending the claim**

- **prudent to negotiate an early settlement to avoid the arrest, the costs and cash deposit.**