

SYNOPSIS OF COVERAGE

In general, coverage is similar to and fashioned after that offered in our real estate title policies, but modified to take into account maritime principles and law. The highlights of coverages are listed below, but, perhaps, the most important feature of the policies is that they provide costs of defense and prosecution for the matters that may be covered therein.

- ◆ Title to the vessel and marketability of that title;
- ◆ Unauthorized transfer;
- ◆ Invalidity of documents because not properly executed, notarized, delivered, filed, or an improper power of attorney was used;
- ◆ Invalidity of transfer because derived through a defective judicial proceeding;
- ◆ Liens and encumbrances to the title (which includes secret maritime liens);
 - Preferred maritime liens¹ are generally excluded except as below.
 - For the lender, coverage is given for lack of priority of the mortgage resulting from a lien for necessities even if the lien for necessities is a preferred maritime lien.
 - We will consider covering a lien for necessities against the owner even if it is a preferred maritime lien.

¹ (5) "preferred maritime lien" means a maritime lien on a vessel--
(A) arising before a preferred mortgage was filed under section 31321 of this title;
(B) for damage arising out of maritime tort;
(C) for wages of a stevedore when employed directly by a person listed in section 31341 of this title;
(D) for wages of the crew of the vessel;
(E) for general average; or
(F) for salvage, including contract salvage

- We will consider covering maritime liens arising out of maritime contracts (such as breach of charter party – i.e. the Bank One case²) even if it is a preferred maritime lien.
 - For your information, attached is a list of lien priorities set forth in the Andoria case.³ We will insure all but items 1 – 4.
- ◆ Fraud, forgery, impersonation, or incompetency;
 - ◆ Invalidity of documents;
 - ◆ Notwithstanding that the Sample Policies require US flag, coverage is available for foreign flags from most countries with a recognized maritime tradition and most flags of convenience, and state registries;
 - ◆ The failure of the Preferred Mortgage to be a preferred mortgage as defined in the US Code⁴;
 - ◆ Invalidity or unenforceability of the preferred mortgage;
 - ◆ The priority of any lien or encumbrance over the lien of the preferred mortgage.

² Bank One, Louisiana N.A. v. MV MR. DEAN
293 F.3d 830

³ United States v. M/V Andoria, 570 F. Supp. 413 (E.D. La. 1983)

⁴ 46 USC 31322

LIEN PRIORITIES

(United States v. One 254 Foot Freighter, M/V Andoria, 570 F.Supp. 413 [ED La. 1983], affirmed 768 F. 2nd 597)

- 1) Expenses of justice (not really a lien but granted first priority)
- 2) Seamen's wages, including maintenance and cure, and wages of longshoreman directly employed by the vessel
- 3) Salvage and general average
- 4) Tort
- 5) Pre-mortgage necessities
- 6) Preferred ship mortgage
- 7) Other liens for necessities
- 8) State created maritime liens
- 9) Liens for penalties and forfeitures for violations of federal statutes
- 10) Non-maritime liens have preference, such as tax liens
- 11) Attachment liens
- 12) Maritime liens in bankruptcy