

Vessel Title Insurance Helps Protect Assets

By Sharon Donovan

When maritime liens turn up, an unsuspecting vessel owner and the lender can be left in the wake of a deal gone sour. But thanks to a new form of title insurance tailored to the maritime industry, owners, lenders and lawyers who might have green-lighted the transaction with a legal opinion are insulated from the potential risk.

First American Transportation Title Insurance Co., a member of The First American Corp., recently introduced its EAGLE Protection Vessel Title Insurance to protect owners and lenders against title defects and deficiencies.

The company's location in a renovated French Quarter complex — a stone's throw from the Mississippi River and the Port of New Orleans — is no accident. Like the city itself, which has been a center for international maritime trade since 1718 when it was founded by the French, First American Transportation Title has considerable roots as a subsidiary of the 111-year-old First American Corp. But far beyond its headquarters in New Orleans, the vessel title insurance company is on its way to providing the maritime industry with an innovative remedy to inherent risks of ownership.

"Title insurance should be as fundamental to vessel transactions as it is to real estate transactions," said John Casbon, chairman, president and chief executive officer of the transportation title division, who is banking on the market trend that has made title insurance an integral part of every real estate purchase.

The maritime title insurance policies provide coverage for U.S.-flagged vessels and foreign registries more than 25-ft. long in the event of a number of potential waterloos, including ownership disputes, certain unrecorded liens, document forgery, defective filing of documents and errors in closing. Additionally, as in land title insurance, Casbon said, marine title insurance policyholders are assured that in the event of a lawsuit questioning the terms of a title policy, the title insurance company provides legal defense for the policyholder and, if the suit is lost, pays all valid claims which are insured up to the amount of the policy.

Marine title insurance is a concept whose time has definitely come, agree experts in the industry. "It's a great idea. It's creative," said Daryl Byrd, president of IberiaBank in Lafayette, La. which specializes in marine lending. "It goes a long way in shifting one of the risk elements for owners and lenders."

The maritime environment has become more complicated and costly — and as those factors escalate, so do the risks of buying and selling vessels. "Just as in other types of title insurance, marine title insurance protects the buyers and the lenders," Byrd said. "It will take time to evolve — and as it does, clients are bound to appreciate our exposing them to the opportunity to cover their risk."

For the past decade, Victor Kooch, general counsel for First American Transportation Title, has believed that the concept of vessel title insurance would ultimately surface in response to the demand of an aggressive market. When he served as general counsel for Tidewater Inc., Kooch remembers an illuminating moment when not having adequate assurance to the title of a vessel jeopardized the deal. "We just couldn't get the necessary indemnification, and I recall thinking to myself 'Boy, I wish there was title insurance for vessels like there is land.'"

Fast-forward to July 2000 when Kooch was lured by Casbon out of retirement to help develop a marine title insurance program. "The reality of the situation is that it is even more necessary for a vessel to be protected than a piece of property on shore," he said.

Until now, an owner or lender had limited ability to assure himself of the integrity of a vessel transaction, at least with respect to the vessel's title, possible liens and encumbrances against it, and the priority of a vessel mortgage, he said. The only resources available were the owner's and lender's own diligence or a legal opinion from an attorney involved in the transaction.

“Reliance on a legal opinion, while of value as a means of evaluating the transaction at the time the opinion is rendered, is of little ongoing protection to the owner or lender,” Kooock said. “Legal opinions, by their very nature, are drafted narrowly and rely upon various assumptions, representations, qualifications and exceptions. They contain disclaimers of liability and, frankly, are prepared in such a way as to severely limit the potential liability of the provider of the opinion.”

A policy of title insurance furnishes valuable coverage that can not be provided any where else. In addition to insuring the title to the vessel and the marketability of that title, the coverage includes protection for forgery, fraud, or incapacity affecting the title.

Coverage is provided during the gap between the transaction closing and the proper recordation of the transaction and mortgage. Protection against certain secret maritime liens is included, as is the priority of the preferred ship mortgage. In addition, the cost of defense to covered title claims is another extremely valuable benefit of the title insurance policy.

First American Transportation Title Insurance Company provides vessel and aircraft title insurance to owners and lenders. For more information call toll free at 800-247-4035 or visit the company’s website at www.firstam.com/transportation.