

Arrests of Bunkers, Cargoes & Assets other than Ships in Panama

Panama's maritime jurisdiction was organized through the Code of Maritime Procedure, which was passed into law in 1982, when the Federal District Court functioning in the former Canal Zone closed as a result of the Canal Treaties between Panama and the United States.

Panama has two maritime courts that exclusively hear maritime cases. Both courts have jurisdiction over the whole of the Republic of Panama. As they are filed, cases are divided evenly between these two courts.

Panama's maritime courts are opened 24 hours per day, 7 days per week and 365 days per year for urgent matters, normally arrests or lifting of arrests. The First and Second Maritime Courts take turns on weekends to be "on call" for arrest cases.

As Panama is a major choke point in the world's shipping lanes, there are more than 14,000 vessel transits through the Panama Canal every year, a figure that will increase after the new and bigger set of locks are completed in 2015. Panama's container ports at both ends of the Canal handled 6.8 million teus in 2012, the highest volume of containerized cargo than any other port in Latin America. These characteristics make Panama an ideal arrest forum to secure a maritime claim.

Most arrests handled by our maritime courts are ship arrests. But, in Panama it is also possible to attach bunkers, cargoes, containers, funds in bank accounts and just about any asset that may be found in, transiting through or calling at Panama.

CARGO ARRESTS

Any arrest petition in Panama must be filed along with a substantive claim and, for most arrests, Prima Facie evidence of the claim and its Quantum. In most cases, the counter-security required is only US\$1,000, irrespective of the claim amount, and US\$2,500 for Marshall's expenses.

Cargoes can be arrested in in-rem actions in which the cargo itself is the defendant. Normally, this type of cargo arrests are effected after the claimant has exercised a possessory lien on the relevant cargo. The purpose of the arrest is basically to have the cargo sold by the court to collect on the claim. This type of in-rem actions against cargoes is very straight forward. Under Panamanian maritime substantive law contained in our Law of Maritime Commerce, the following claims give rise to liens on cargoes:

1. Any judicial costs caused in the common interest of creditors.
2. Any expenses, indemnities and salaries for assistance and salvage due for the last voyage.
3. Any commercial taxes or fiscal rights owed for the same things at the place of unloading.
4. Any transportation and cargo expenses.
5. Any leasing of storage for the things unloaded.
6. Any amounts owed for general average contributions.
7. Bottomry bonds and insurance premiums.

8. Any amounts of capital and interest owed by virtue of the obligations contracted by the captain on the freight, with the legal formalities.
9. Any other loan with pledge on the cargo, if the lender shall hold the Bill of Lading.

In Panama, most in-rem actions against cargoes arise from unpaid freight or unpaid port dues.

The more complex cargo arrests are those in respect of claims that are unrelated to the particular cargo which is the target of the arrest. The most common of these arrests are to secure voyage charter claims. In these arrests, the claimant finds out that cargo belonging to a defendant will either pass through the Panama Canal or will be transhipped in one of our ports. These arrests are always to secure an action in-personam against the particular defendant. Firstly, the claimant must ascertain that the particular defendant is in fact the owner of the cargo, in order to avoid a possible wrongful arrest. In contrast to ships, the ownership of either cargoes or bunkers is not a matter of public record. In most cases, the claimant has unconfirmed market reports that a particular cargo on board a vessel that will transit through the Canal is owned by the defendant. These arrests entail detaining a vessel, so damages as a result of a wrongful arrest could be considerable. The problem can be solved by obtaining an order for a judicial inspection of documents evidencing ownership of the cargo on board the vessel, such as bills of lading, at the same time that the arrest order is to be served. Normally, the lawyer acting for the claimant is allowed to go on board the vessel with the targeted cargo along with the Marshall of the Court. If the relevant bill of lading or other such document confirms the owner of the cargo is the defendant, the arrest order is served. If the documentation on board shows otherwise, the arrest can be called off without causing damages.

Another issue with this type of cargo arrests is the use of the vessel as a “storage facility.” If security is not arranged promptly and the arrest prolongs itself, the owner, bareboat or time charterer of the ship carrying the arrested cargo may argue that the vessel is effectively being used as a “storage facility” and claim from the Marshall the equivalent to the daily time charter value of the vessel. If the claimant is forced to pay such storage costs, the defendant would have to post such charges, as well as the principal of the claim, legal costs and interest to lift the arrest. In a 2005 case, Shinwa Kaiun Kaisha Ltd. vs. Eitzen Sealift AS, the Second Maritime Court issued an arrest order against the bunkers on board “Umberto D’Amato” for a claim for the charges of using another vessel, “Pacific Prosperity,” as a floating storage for the period that the cargo on board said vessel was arrested. Shinwa were the time charterers of the “Pacific Prosperity”, when Eitzen arrested her cargo. That claim settled and Eitzen in turn included the storage charges in its claim against cargo interests. The case illustrates some of the complexity that could be associated with arresting cargoes in Panama. But, such arrests can be very effective to secure a claim when, for instance, a voyage charterer is refusing to provide security for a claim.

Bunkers Arrests

In Panama, bunker arrests are more common than cargo arrests. When the bunkers are owned, for instance, by a liner operator, the ownership of the bunkers is not much of an issue. Yet, the same problem arises as with cargo arrests, when the claimants’ only evidence that the

defendant owns the bunkers on board any particular vessel is unconfirmed market reports. The solution is again to petition for an order for a judicial inspection of documents on board the vessel whose bunkers are being arrested. In this instance, the claimant's lawyer is looking for a copy of the time charter party, copies of communications of the ship with time charterers and vice-versa, copy of the Panama Canal Ship's Particulars' Declaration, etc. Again, if the documents found on board do not show that the defendant owns the targeted bunkers, the arrest can be called off to avoid a wrongful arrest.

Other issues that may arise in bunkers' arrests are possible petitions for removal of the bunkers from the ship if the arrest prolongs itself. In a very recent case, Hyundai Merchant Marine Co. Ltd. vs. STX Pan Ocean Co. Ltd. & Post Maritime Ox, S.A., the bunkers on board the M/V "Pos Azurit" were arrested and the vessel owners, a German company, intervened in the proceedings to petition the court for the removal of the bunkers. The Second Maritime Court issued a resolution the next day ordering the claimant/arresting party to remove the bunkers from the vessel.

ARRESTS OF OTHER ASSETS AND CONCLUSION

Any other asset of the defendant found in Panama can be arrested or attached to secure a maritime claim. These include funds in bank accounts, containers, buildings, etc. This type of arrests does not present as many potential issues as arrests of cargoes or bunkers because it does not entail detaining a vessel.

The most important point of this presentation is that, while Panama is well-known as a ship arrest forum, there are other types of assets that either transit through the Panama Canal or call at our ports that can also be arrested to secure a maritime claim.