

Y4  
.C 73/2

1041

90-42  
90-42-42  
90-42-3/2

# 90-42 GRANTING MASTERS' LIENS

GOVERNMENT  
Storage

HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
MERCHANT MARINE AND FISHERIES  
OF THE  
COMMITTEE ON COMMERCE  
UNITED STATES SENATE  
NINETIETH CONGRESS

FIRST SESSION

ON

## H.R. 162

AN ACT TO GRANT THE MASTERS OF CERTAIN UNITED STATES VESSELS A LIEN ON THOSE VESSELS FOR THEIR WAGES

OCTOBER 11, 1967

Serial No. 90-42

Printed for the use of the Committee on Commerce  
**KANSAS STATE UNIVERSITY LIBRARIES**



U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1967

86-952

KSU LIBRARIES  
A11900 501787

AK  
C. 13/5  
90-42

100-100  
100-100  
100-100

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

- |                                    |                              |
|------------------------------------|------------------------------|
| JOHN O. PASTORE, Rhode Island      | NORRIS COTTON, New Hampshire |
| A. S. MIKE MONRONEY, Oklahoma      | THRUSTON B. MORTON, Kentucky |
| FRANK J. LAUSCHE, Ohio             | HUGH SCOTT, Pennsylvania     |
| E. L. BARTLETT, Alaska             | WINSTON L. PROUTY, Vermont   |
| VANCE HARTKE, Indiana              | JAMES B. PEARSON, Kansas     |
| PHILIP A. HART, Michigan           | ROBERT P. GRIFFIN, Michigan  |
| HOWARD W. CANNON, Nevada           |                              |
| DANIEL B. BREWSTER, Maryland       |                              |
| RUSSELL B. LONG, Louisiana         |                              |
| FRANK E. MOSS, Utah                |                              |
| ERNEST F. HOLLINGS, South Carolina |                              |

- FREDERICK J. LORDAN, *Staff Director*  
 JAMES J. BARRY, *Assistant Staff Director*  
 MICHAEL PERTSCHUK, *General Counsel*  
 RALPH W. HORTON, *Assistant General Counsel*  
 STANLEY H. BARER, *Staff Counsel*

SUBCOMMITTEE ON MERCHANT MARINE AND FISHERIES

E. L. BARTLETT, Alaska, *Chairman*

- |                                    |                              |
|------------------------------------|------------------------------|
| WARREN G. MAGNUSON, Washington     | ROBERT P. GRIFFIN, Michigan  |
| JOHN O. PASTORE, Rhode Island      | WINSTON L. PROUTY, Vermont   |
| PHILIP A. HART, Michigan           | NORRIS COTTON, New Hampshire |
| DANIEL B. BREWSTER, Maryland       |                              |
| RUSSELL B. LONG, Louisiana         |                              |
| ERNEST F. HOLLINGS, South Carolina |                              |

(II)



## CONTENTS

	Page
Opening statement by the chairman.....	1
H.R. 162.....	1
Department of the Interior, letter dated October 10, 1967.....	2
Department of Transportation, letter dated October 9, 1967.....	2
Department of Commerce, letter dated October 9, 1967.....	3

### STATEMENTS

Carl C. Davis, General Counsel, Maritime Administration, accompanied by William R. Burchill, Assistant General Counsel, Maritime Administration, Washington, D.C.....	7
Capt. Thomas F. O'Callaghan, secretary-treasurer, accompanied by Edward Pierson, counsel, International Organization of Masters, Mates & Pilots.....	18

# CONTENTS

Page	
1	Department of the Interior, Bureau of Land Management, 1947
2	Department of the Interior, Bureau of Land Management, 1948
3	Department of the Interior, Bureau of Land Management, 1949
4	Department of the Interior, Bureau of Land Management, 1950

## STATISTICS

Page	
5	Department of the Interior, Bureau of Land Management, 1947
6	Department of the Interior, Bureau of Land Management, 1948
7	Department of the Interior, Bureau of Land Management, 1949
8	Department of the Interior, Bureau of Land Management, 1950

## GRANTING MASTERS LIENS

WEDNESDAY, OCTOBER 11, 1967

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
SUBCOMMITTEE ON MERCHANT MARINE AND FISHERIES,  
Washington, D.C.

The subcommittee met at 10 a.m., in room 5110, New Senate Office Building, Hon. E. L. Bartlett (chairman of the subcommittee) presiding.<sup>1</sup>

### OPENING STATEMENT BY THE CHAIRMAN

Senator BARTLETT. The subcommittee will be in order.

This morning we will hear testimony on H.R. 162, a bill to provide a master of a vessel documented under the laws of the United States a lien for his wages against the vessel as other seamen serving on such a vessel now have, and a lien for proper disbursements.

This bill was the subject of hearings before the House committee in April and was approved by the full House in late June.

I shall place in the record at this point communications from the Committee of American Steamship Lines and the American Maritime Association in support of H.R. 162, and reports of various Government agencies upon the merits of the proposed legislation.

I might add that all agencies with the exception of the Department of Commerce express no opposition to the substance of the bill, and the Department of Transportation has suggested some technical amendments to simplify codification considerations.

(The bill and agency comments follow:)

[H.R. 162, 90th Cong., first sess.]

AN ACT To grant the masters of certain United States vessels a lien on those vessels for their wages and for certain disbursements

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) the master of a vessel documented, registered, enrolled, or licensed under the laws of the United States shall have the same lien for his wages against such vessel and the same priority as any other seaman serving on such vessel.

(b) Sections 4546 and 4547 of the Revised Statutes of the United States (46 U.S.C. 603 and 604) shall not apply in any proceeding brought by a master for the enforcement of the lien granted by this section.

(c) Section 4535 of the Revised Statutes of the United States (46 U.S.C. 600) is amended by striking out "seaman" each place it appears and inserting in lieu thereof at each such place "master or seaman".

(d) Section 12 of the Act of March 4, 1915, as amended (38 Stat. 1164, 46 U.S.C. 601), is amended (1) by striking out "seaman or apprentice" each place it appears and inserting in lieu thereof at each such place "master, seaman, or apprentice", and (2) by striking out in the first proviso thereof "any seaman" and inserting in lieu thereof "any master or seaman".

<sup>1</sup> The professional staff member in charge of these proceedings was Stanley H. Barer.

(e) A master shall have the same lien and the same priority for disbursements or liabilities properly made or incurred by him for or on account of the vessel as he has, under the provisions of this section, for his wages.

SEC. 2. For the purposes of this Act, section 4535 of the Revised Statutes of the United States and section 12 of the Act of March 4, 1915, as amended (38 Stat. 1164; 46 U.S.C. 601), the term "master" shall include every person having command of any vessel documented, registered, enrolled, or licensed under the laws of the United States, except a person who has a financial interest valued at 5 per centum or more either of the corporation, partnership, or association which owns the vessel against which the lien is claimed, or of the market value of the vessel against which the lien is claimed.

Passed the House of Representatives June 19, 1967.

Attest:

W. PAT JENNINGS,  
Clerk.

Amend the title so as to read: "An Act to grant the masters of certain United States vessels a lien on those vessels for their wages."

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., October 10, 1967.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: Your Committee has requested this Department's comments on H.R. 162, a bill "To grant the masters of certain United States vessels a lien on those vessels for their wages and for certain disbursements", which passed the House of Representatives on June 19, 1967.

The bill gives the master of a documented vessel, including a vessel documented to engage in the fisheries of the United States, the same lien and priority for wages against the vessel that any other seaman has. Similarly, it gives him the same lien and priority for disbursements or liabilities properly made or incurred by him that he has for wages. The bill defines the master to include anyone having command of the vessel, except those who have a financial interest valued at 5 percent or more either in the organization owning the vessel or of the market value of the vessel.

From the standpoint of this Department's program, we have no objection to this legislation so long as the above definition is retained in the bill. This provision protects the Department which is the mortgagee of many commercial fishing vessels. In most cases, the owner or part owner, usually having a greater than 5 percent interest, is also the master. We defer to the Department of Commerce regarding the need for, or desirability of, the legislation.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

STANLEY A. CAIN,  
Assistant Secretary of the Interior.

OFFICE OF THE SECRETARY OF TRANSPORTATION,  
Washington, D.C., October 9, 1967.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for our views on H.R. 162, a bill to grant the masters of certain United States vessels a lien on those vessels for their wages and for certain disbursements.

The bill would provide for masters of vessels of the United States the same lien for wages against their vessels, and the same priority therefor, as seamen on these vessels now have. The master would also have the same lien and priority for disbursements or liabilities properly made or incurred by him for or on account of the vessel. Master is uniquely defined as one having command of a vessel and not having a financial interest of five percent or more in the vessel or the entity which owns it. Finally, the bill would provide for the master the same protection against attachment of wages as is now afforded seamen.

Seamen have traditionally been given a lien for wages on the ship under general maritime law. Existing United States statutory law does not create seamen's liens but recognizes them and grants certain special methods of enforcement. The general maritime law has not recognized liens by masters and it would appear, therefore, that if masters are to have the benefit of such liens, they must be authorized by statute.

The Department notes that two subsections of the bill amend a revised statute and a section of a Statute-at-Large, respectively, while three subsections and another section add substantive provisions of law. If the bill is enacted, the provisions of the bill would necessarily be separated when placed into the code in spite of the fact that they deal collectively with a single subject matter, the masters' liens. The Coast Guard is concerned with the administration of a number of laws relating to seamen and crewmembers aboard vessels and the organization of these laws is of some interest to the Department. It is suggested that the bill be amended to incorporate its substantive provisions as an additional section to the revised statutes. A draft of a proposed revision is attached.

Subject to the foregoing, the Department of Transportation has no objection to the enactment of H.R. 162.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

JOHN L. SWEENEY,  
*Assistant Secretary for Public Affairs.*

A BILL To grant to masters of certain United States vessels a lien on those vessels for their wages and for certain disbursements, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That title LIII of the Revised Statutes is amended by adding the following new section after section 4547:

"Sec. 4547a. (1) The master of a vessel documented, registered, enrolled, or licensed under the laws of the United States shall have the same lien for his wages against such vessel and the same priority as any seaman serving on such vessel.

"(2) Such a master shall have the same lien and the same priority for disbursements or liabilities properly made or incurred by him for or on account of the vessel as he has for his wages.

"(3) Sections 4546 and 4547 do not apply in any proceeding brought by a master for the enforcement of a lien granted by this section.

"(4) For the purposes of this section, section 4535 of the Revised Statutes of the United States and section 12 of the Act of March 4, 1915, as amended (38 Stat. 1164; U.S.C. 601), the term 'master' shall include every person having command of any vessel documented, registered, enrolled, or licensed under the laws of the United States, except a person who has a financial interest valued at 5 per centum or more either of the corporation, partnership, or association which owns the vessel against which the lien is claimed, or of the market value of the vessel against the lien is claimed.

"SEC. 2. Section 12 of the Act of March 4, 1915, as amended (38 Stat. 1164; 46 U.S.C. 601) is amended (1) by striking out 'seaman or apprentice' each place it appears and inserting in lieu thereof at each such place 'master, seaman, or apprentice', and (2) by striking out in the first proviso thereof 'any person' and inserting in lieu thereof 'any master or seaman'.

"SEC. 3. Section 4535 of the Revised Statutes (46 U.S.C. 600) is amended by striking out 'seaman' each place it appears and inserting in lieu thereof at each such place 'master or seaman'."

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,  
*Washington, D.C., October 9, 1967.*

HON. WARREN G. MAGNUSON,  
*Chairman, Senate Commerce Committee,*  
*U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department on H.R. 162, an Act to grant the masters of certain United States vessels a lien on those vessels for their wages and for certain disbursements.

The Act would provide that the master of an American-flag vessel shall have the same lien for his wages, and the same priority for that lien, as seamen serving on the

vessel. The Act would further provide that such a master shall have the same lien for disbursements he makes, or for liabilities he properly incurs, for or on account of the vessel, and the same priority for that lien, as he would have under the Act for his wages. The Act would also amend certain other statutes to provide that the master cannot contract away his liens, that his wages shall not be subject to attachment except for the support of his wife and children, and that the provisions of the Revised Statutes which furnish a procedure for seamen to initiate a proceeding against the master when there is a dispute as to the amount of wages due, shall not apply to the masters liens. For purposes of the Act, the term "master" excludes persons who have a financial interest valued at 5 per centum or more either of the corporation, partnership, or association which owns the vessel against which the lien is claimed, or of the market value of the vessel against which the lien is claimed.

If the Act is amended as hereinafter proposed, we would recommend favorable consideration. If the Act is amended as we propose, it will grant the master of an American-flag vessel a lien for his wages if he is not the owner or a part owner of the vessel and if he does not, directly or indirectly, own stock in the corporation that owns the vessel, but in no case would it grant him a lien for his disbursements. As applied to vessels on which there is a preferred mortgage at the time of the enactment of the Act, however, our proposed amendment would grant such a master a lien only for wages earned after the discharge of the mortgage. The purpose of this is to avoid causing defaults under the mortgages. If the Act is amended as we propose, it would also omit, for reasons indicated below, subsections 1 (b), (c) and (d).

There are certain liens specified in the Ship Mortgage Act, 1920, which are always paid before the preferred mortgage regardless of when they attach. These are seamen's wages and salvage, wages of a stevedore when employed directly by the owner, operator, master, ship's husband or agent of the vessel, general average, and any contract lien which attached prior to the preferred mortgage. All liens on a vessel are paid in the following order:

- (1) seamen's wages and salvage,
- (2) tort liens,
- (3) contract liens which attached prior to the preferred mortgage, general average, and the foregoing stevedore wages,
- (4) the preferred mortgage,
- (5) contract liens which attached after the preferred mortgage except general average and the foregoing stevedore wages.

Within each of the foregoing classes (except the preferred mortgage class), the liens are paid in the reverse order of their creation. The only liens that the preferred mortgage is ahead of are the above-described contract liens that attached after the preferred mortgage attached.

For more than a century, our Courts have given seamen's liens for wages against a vessel priority over all other maritime liens against that vessel. Courts have frequently referred to the language used by Mr. Justice Story in an 1831 opinion of the Supreme Court (Sheppard V. Taylor, 30 U.S. 675, 710) where he described the seamen's lien for wages as being "so sacred and indelible, that . . . it adheres to the last plank of the ship."

The priority placed on liens for wages is based on the philosophy underlying much of admiralty law—that is to say, the necessity of keeping the ship sailing. Where, for one of many causes, including the shaky financial condition of the owner of a ship, wages cannot be paid when due, seamen stick with the ship rather than leave it at the first hint of trouble because they know that they can have the vessel arrested and then be entitled to a lien of highest priority on that vessel. We believe that in modern times the same rationalization applies to the master if he is not an owner or part owner of the vessel and does not own stock in the corporation that owns the vessel. We think that such a master should have a lien for his wages that is of the same rank as that of the crew.

We do not believe a master should have such a lien if he is owner or part owner of the vessel. Such a master is a private enterpriser and we believe that the liens we have listed have a better claim to share in the proceeds of sale of the vessel than he has. If the master wants the lien for his wages, he can forego the interest in the vessel or in the corporation. If he wants to be an owner, he can forego his lien for his wages. This is the fairest treatment for all claimants.

We do not think a master, whether or not he has any financial interest in the vessel, should have a lien for his disbursements. We believe it is quite unusual for a master to make disbursements out of his own funds for the account of the vessel unless he is part owner of the vessel. If he does make such disbursements, he is subrogated to the position of the person he has paid. For example, if he pays

seamen's wages with his own funds, he has the lien of the seamen he paid, and on sale of the vessel, he would participate with the unpaid seamen and salvage as the first class of claimants on the proceeds. Similarly if he pays a supplier, he would be subrogated to the supplier's lien. Since he is subrogated, we do not believe he is entitled to any other lien or priority for his disbursements. Attached is a memorandum of law on this question. "(Attachment A)"

If the Act is enacted to give the master "the same priority for disbursements or liabilities properly made or incurred by him for or on account of the vessels" as a seaman has for wages, a means would have been created to erode the position of tort claims of general average, of the above-described stevedore wages, and of the preferred mortgage. We think this would be unfair to such claimants and would seriously impair the usefulness of preferred mortgages as an instrument of finance to obtain the construction or reconstruction of ships.

The Ship Mortgage Act, 1920, was enacted to provide a means of financing the construction and reconstruction of ships. As previously stated, the only liens that a preferred mortgage is ahead of are certain contract liens that attach after the preferred mortgage. By making disbursements from his own funds, or by incurring liabilities for himself for or on account of the vessel, the master, under the Act, would advance such contract liens over the above-described liens and put such contract liens in the same class with seamen's wages and salvage. Within each class, liens are paid in the reverse order of their creation. It is entirely possible therefore under the Act that instances will occur in which there will be no funds available to pay any lien except such after-acquired contract liens and that there will be nothing remaining to pay seamen's wages or salvage or tort claims or general average or stevedore wages or the preferred mortgage.

Subsection 1(c) of the Act would provide that the master cannot contract away his liens. Subsection 1(d) would prevent attachment of the master's wages except for the support of his wife and children. The master of a ship is a responsible man and we think he is in no need of the protection of these provisions.

Subsection 1(b) of the Act would provide that the provisions of the Revised Statutes which provide a procedure with respect to disputes between the master and seamen over the seamen's wages, shall not apply to master's liens. This subsection is unnecessary because these provisions by their terms are confined to seamen's wages.

If the Act is amended to grant the master a lien for his wages earned after any mortgage on the vessel at the time of enactment of the Act is discharged and only if he is not a part owner of the vessel and neither directly nor indirectly owns stock in the corporation that owns the vessel, and if the Act is amended to delete the other provisions, as we recommend, we would favor the Act. The reason for our recommendation that with respect to vessels on which there is a preferred mortgage on the date of enactment of the Act, the amendments should apply only to wages earned after the discharge of such mortgage is to avoid defaults under such mortgages. A standard provision in preferred mortgages is that the mortgagor will allow only certain specified liens to attach to the ship, and the lien for the master's wages is not one of such specified, permitted liens.

Attached, as "Attachment B", is a substitute text which would carry out our recommendations.

The substitute text would amend the Ship Mortgage Act, 1920. It would amend that Act by inserting immediately after the provisions creating the lien for necessities, the provisions to create the lien for the master's wages. These provisions apply whether there is a mortgage on the ship or not. It would also amend subsection M of that Act to provide that the master's lien for wages, regardless of when it attaches, will always be paid before the preferred mortgage. The liens which that subsection now provides shall be paid before the preferred mortgage regardless of when they attach are the liens for seamen's wages and salvage, wages of a stevedore when employed directly by the owner, operator, master, ship's husband or agent of the vessel, general average and any contract lien that attached prior to the preferred mortgage. With respect to vessels on which there is a preferred mortgage on the date of enactment of the Act, the substitute text would apply the amendments only to wages earned after the discharge of such mortgage.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,

JOSEPH BARTLETT,  
General Counsel.

## ATTACHMENT A—SUBROGATION

It is established under American admiralty law that a person who advances money to discharge a maritime lien obtains a lien of equal priority and dignity to the one which has been discharged. The American rule is summarized as follows by Professor Robinson, *Admiralty*, page 433:

"The rules grant equal rank to one who pays a maritime lien claimant with that of the lien paid, provided that payment was made for the purpose of satisfying the lien and was actually used for that purpose."

The American rule has been repeatedly applied in numerous decisions, including the following cases:

- The Little Charley*, 31 F. 2d 120 (1929).
- The City of Camden*, 147 Fed. 847 (1906).
- The Worthington*, 133 Fed. 725 (1904).
- The Thomas Sherlock*, 22 Fed. 253 (1884).
- The Guiding Star*, 18 Fed. 263 (1883).
- The Emily B. Souder*, 17 Wall. 666 (U.S. 1873).

In *The Little Charley*, 31 F. 2d 120 (District Court, Maryland, 1929), the court held there is subrogation to maritime liens regardless of the actual necessity for making the advances. The court stated:

"It is true that advances made to a vessel's owner on the vessel's credit, for the purpose of paying, and out of which there is actually paid, maritime claims, entitle the one making such advances to a maritime lien of equal rank with the claims thus satisfied, without regard to an actual necessity for the advances."

In *The City of Camden*, 147 Fed. 847 (District Court, Alabama, 1906), the court held that it is well settled that "where funds are loaned in a foreign port to discharge valid existing maritime liens, and are so used, the lender may properly and equitably stand in the place of the lienholders whose demands have been discharged with the funds furnished by him." (page 848).

In *The Worthington*, 133 Fed. 725 (Court of Appeals, Seventh Circuit, 1904), the court held that a person who advanced money in a foreign port to the owner of a vessel, who was without funds, to be used in loading the vessel in that port, and upon the credit of the vessel, is entitled to a maritime lien therefor.

In *The Thomas Sherlock*, 22 Fed. 253 (District Court, Ohio, 1884), the court held that a person advancing money on the credit of the boat to pay off maritime claims is entitled to the same rank as the claims which were paid off.

In *The Guiding Star*, 18 Fed. 263 (Circuit Court, Ohio, 1883), the court held that claims for seaman's wages are entitled to priority and that persons advancing money on the credit of the boat to pay off other maritime claims entitled to liens and actually used for that purpose are actually entitled to the same rank as the claims which were thus paid off. The opinion contains a good summary of maritime liens and their priority.

In *The Emily B. Souder*, 17 Wallace 666 (1873), the Supreme Court of the United States held that a person advancing money on the credit of a vessel in a foreign port to pay off maritime liens is entitled to liens of equal rank to those thus paid off.

The American rule has also been applied more specifically to provide for subrogation to seamen's claims, as is shown in the following decisions:

- The Englewood*, 57 F. 2d 319 (1932).
- The Minnie and Emma*, 21 F. 2d 991 (1927).
- The Bergen*, 7 F. 2d 379 (1925).
- The Ruth E. Merrill*, 286 Fed. 355 (1922).

In *The Englewood*, 57 F. 2d 319 (District Court, New York, 1932), the court held that the crew had a maritime lien for their wages, and that those who advanced money to pay the crew's wages are entitled by way of subrogation, to a maritime lien of the same rank.

In *The Minnie and Emma*, 21 F. 2d 991 (District Court, Maryland, 1927), the court held that a person who advanced money to pay the crew's wages was entitled to a maritime lien. The court further applied the rule that "one who advances money to discharge liens gets a lien of equal dignity with the one discharged, and the existence of 'a necessity,' as argued by claimant, is not made a condition precedent." (Page 992.)

In *The Bergen*, 7 F. 2d 379 (District Court, California, 1925), the court held that the lien claimant, who endorsed notes solely on credit of the ship, for money actually used to pay crew's wages, was entitled to the same status and priority as any other person who advances money to pay crew's wages.

In *The Ruth E. Merrill*, 286 Fed. 355 (Court of Appeals, Second Circuit, 1929), the court held that a mortgagee, not in possession of a vessel, is not precluded

by his interest from advancing money to the owner to discharge liens, including those for crew's wages, incurred in foreign ports. Nor was he precluded from subrogation to the liens thus discharged by his advances.

ATTACHMENT B—SUBSTITUTE TEXT FOR H.R. 162

That the Ship Mortgage Act, 1920, as amended (46 U.S.C. 911-984), is amended as follows:

(1) By striking out of subsection M(a)(2) thereof the words "and for salvage, including contract salvage" and inserting in lieu thereof the words "for salvage, including contract salvage, and the lien for a master's wages created by subsection U of this section".

(2) By relettering subsections U, V, W, and X as subsections V, W, X and Y.

(3) By inserting after subsection T the following: "Masters' Liens for Wages"  
 "Subsection U. If the master of a vessel documented under the laws of the United States is not the owner or a part owner of the vessel and does not own any stock in the corporation that owns the vessel, he shall have the same lien on the vessel for his wages, and the same priority for that lien, as any member of the crew."

Sec. 2. With respect to vessels on which there is a preferred mortgage on the date of enactment of this Act, the amendments made by this Act shall apply only to wages earned by the master of such vessel after the discharge of such mortgage.

Senator BARTLETT. The first witness this morning is Carl C. Davis, General Counsel, Maritime Administration.

**STATEMENT OF CARL C. DAVIS, GENERAL COUNSEL, MARITIME ADMINISTRATION, ACCOMPANIED BY WILLIAM R. BURCHILL, ASSISTANT GENERAL COUNSEL**

Mr. DAVIS. Mr. Chairman, I appreciate this opportunity to present the views of the Maritime Administration and the Department of Commerce on H.R. 162.

H.R. 162 would provide that the master of an American-flag vessel shall have the same lien for his wages, and the same priority for that lien, as seamen serving on the vessel. The act would further provide that such a master shall have the same lien for disbursements he makes, or for liabilities he properly incurs, for or on account of the vessel, and the same priority for that lien, as he would have under the act for his wages. The act would also amend certain other statutes to provide that the master cannot contract away his liens, that his wages shall not be subject to attachment except for the support of his wife and children, and that the provisions of the Revised Statutes which furnish a procedure for seamen to initiate a proceeding against the master when there is a dispute as to the amount of wages due, shall not apply to the masters' liens. For purposes of the act, the term "master" excludes persons who have a financial interest valued at 5 percent or more either of the corporation, partnership, or association which owns the vessel against which the lien is claimed, or of the market value of the vessel against which the lien is claimed.

If the act is amended as hereinafter proposed, we would recommend favorable consideration. If the act is amended as we propose, it will grant the master of an American-flag vessel a lien for his wages if he is not the owner or a part owner of the vessel and if he does not, directly, or indirectly, own stock in the corporation that owns the vessel, but in no case would it grant him a lien for his disbursements. As applied to vessels on which there is a preferred mortgage at the time of the enactment of the act, however, our proposed amendment would grant

such a master a lien only for wages earned after the discharge of the mortgage. The purpose of this is to avoid causing defaults under the mortgages. If the act is amended as we propose, it would also omit, for reasons indicated below, subsections 1 (b), (c), and (d).

There are certain liens specified in the Ship Mortgage Act, 1920, which are always paid before the preferred mortgage regardless of when they attach. These are seamen's wages and salvage, wages of a stevedore when employed directly by the owner, operator, master, ship's husband or agent of the vessel, general average, and any contract lien which attached prior to the preferred mortgage. All liens on a vessel are paid in the following order:

- (1) Seamen's wages and salvage,
- (2) Tort liens,
- (3) Contract liens which attached prior to the preferred mortgage, general average, and the foregoing stevedore wages,
- (4) The preferred mortgage,
- (5) Contract liens which attached after the preferred mortgage except general average and the foregoing stevedore wages.

Within each of the foregoing classes—except the preferred mortgage class—the liens are paid in the reverse order of their creation. The only liens that the preferred mortgage is ahead of are the above-described contract liens that attached after the preferred ship mortgage attached.

For more than a century, our courts have given seamen's liens for wages against a vessel priority over all other maritime liens against that vessel. Courts have frequently referred to the language used by Mr. Justice Story in an 1832 opinion of the Supreme Court (*Sheppard v. Taylor*, 30 U.S. 675, 710) where he described the seamen's lien for wages as being "so sacred and indelible, that \* \* \* it adheres to the last plank of the ship."

The priority placed on liens for wages is based on the philosophy underlying much of admiralty law—that is to say, the necessity of keeping the ship sailing. Where, for one of many causes, including the shaky financial condition of the owner of a ship, wages cannot be paid when due, seamen stick with the ship rather than leave it at the first hint of trouble because they know that they can have the vessel arrested and then be entitled to a lien of highest priority on that vessel. We believe that in modern times the same rationalization applies to the master if he is not an owner or part owner of the vessel and does not own stock in the corporation that owns the vessel. We think that such a master should have a lien for his wages that is of the same rank as that of the crew.

We do not believe a master should have such a lien if he is owner or part owner of the vessel. Such a master is a private enterpriser and we believe that the liens we have listed have a better claim to share in the proceeds of sale of the vessel than he has. If the master wants the lien for his wages, he can forego the interest in the vessel or in the corporation. If he wants to be an owner, he can forego his lien for his wages. This is the fairest treatment for all claimants.

We do not think a master, whether or not he has any financial interest in the vessel, should have a lien for his disbursements. We believe it is quite unusual for a master to make disbursements out of his own funds for the account of the vessel unless he is part owner of the vessel. If he does make such disbursements, he is subrogated to

the position of the person he has paid. For example, if he pays seaman's wages with his own funds, he has the lien of the seamen he paid, and on sale of the vessel, he would participate with the unpaid seamen and salvage as the first class of claimants on the proceeds. Similarly if he pays a supplier, he would be subrogated to the supplier's lien. Since he is subrogated, we do not believe he is entitled to any other lien or priority for his disbursements. Attached, as "attachment A," is a memorandum of law on this question.<sup>1</sup>

If the act is enacted to give the master "the same priority for disbursements or liabilities properly made or incurred by him for or on account of the vessels" as a seaman has for wages, a means would have been created to erode the position of tort claims, of general average, of the above-described stevedore wages, and of the preferred mortgage. We think this would be unfair to such claimants and would seriously impair the usefulness of preferred mortgages as an instrument of finance to obtain the construction or reconstruction of ships.

The Ship Mortgage Act, 1920, was enacted to provide a means of financing the construction and reconstruction of ships. As previously stated, the only liens that a preferred mortgage is ahead of are certain contract liens that attach after the preferred mortgage. By making disbursements from his own funds, or by incurring liabilities for himself for or on account of the vessel, the master, under the act, would advance such contract liens over the above-described liens and put such contract liens in the same class with seamen's wages and salvage. Within each class, liens are paid in the reverse order of their creation. It is entirely possible therefore under the act that instances will occur in which there will be no funds available to pay any lien except such after-acquired contract liens and that there will be nothing remaining to pay seamen's wages or salvage or tort claims or general average or stevedore wages or the preferred mortgage.

Subsection 1(c) of the act would provide that the master cannot contract away his liens. Subsection 1(d) would prevent attachment of the master's wages except for the support of his wife and children. The master of a ship is a responsible man and we think he is in no need of the protection of these provisions.

Subsection 1(b) of the act would provide that the provisions of the Revised Statutes which provide a procedure with respect to disputes between the master and seamen over the seamen's wages, shall not apply to master's liens. This subsection is unnecessary because these provisions by their terms are confined to seamen's wages.

If the act is amended to grant the master a lien for his wages earned after any mortgage on the vessel at the time of enactment of the act is discharged and only if he is not a part owner of the vessel and neither directly nor indirectly owns stock in the corporation that owns the vessel, and if the act is amended to delete the other provisions, as we recommend, we would favor the act. The reason for our recommendation that with respect to vessels on which there is a preferred mortgage on the date of enactment of the act, the amendments should apply only to wages earned after the discharge of such mortgage is to avoid defaults under such mortgages. A standard provision in preferred mortgages is that the mortgagor will allow only certain specified liens to attach to the ship, and the lien for the master's wages is not one of such specified, permitted liens.

<sup>1</sup> Attachments will be found appended to the letter from the Department of Commerce:

Attached, as "attachment B," is a substitute text which would carry out our recommendations.

The substitute text would amend the Ship Mortgage Act, 1920. It would amend that act by inserting immediately after the provisions creating the lien for necessities, the provisions to create the lien for the master's wages. These provisions apply whether there is a mortgage on the ship or not. It would also amend subsection M of that act to provide that the master's lien for wages, regardless of when it attaches, will always be paid before the preferred mortgage. The liens which that subsection now provides shall be paid before the preferred mortgage regardless of when they attach are the liens for seamen's wages and salvage, wages of a stevedore when employed directly by the owner, operator, master, ship's husband or agent of the vessel, general average and any contract lien that attached prior to the preferred mortgage. With respect to vessels on which there is a preferred mortgage on the date of enactment of the act, the substitute text would apply the amendments only to wages earned after the discharge of such mortgage.

That concludes my statement.

Senator BARTLETT. For the benefit of the record, Mr. Davis, would you give the name of the gentleman accompanying you.

Mr. DAVIS. Yes. This is Mr. William R. Burchill, Assistant General Counsel in charge of legislation in the Maritime Administration.

Senator BARTLETT. There will be a question or two.

First, what is a ship's husband?

Mr. DAVIS. A ship's husband is one of its agents that takes care of assisting and supplying, billing, taking care of shoreside problems of the vessel.

Senator BARTLETT. Does he ever object to being called that?

Mr. DAVIS. He loves it. He gets paid for it.

Senator BARTLETT. In your testimony, Mr. Davis, you have urged that a master be allowed to contract away the lien that would be provided by this legislation and that the master's lien be subject to attachment in cases other than those involving a debt arising for expenditures involving the support of a wife or child.

Isn't it true that under existing law a seaman's lien for wages is not able to be contracted away by the seaman nor is his lien right attachable except for support of wife or child?

Mr. DAVIS. That is true, Mr. Chairman, and has been for many, many years. It was once thought that a seaman, having spent so much of his time aboard ship, when he got freedom ashore fell to the wiles of women and he needed the protection——

Senator BARTLETT. What is that?

Mr. DAVIS. Women committing him to sign away his wages to them. The law provided protection. I don't think a master falls in that category. I doubt that seamen do these days.

Senator BARTLETT. Then should the master's lien have a different status from that of the seaman?

Mr. DAVIS. I do not think that this is a provision of law that should be expanded any further. In fact, it might be wise at this time, or sometime in the near future, to examine whether or not this protection is really necessary from the standpoint of seamen, members of the crew.

But I certainly do not believe there is any justification for expanding it. I think masters of vessels are responsible men. I don't believe they are in need of that protection.

Senator BARTLETT. They are human beings, too, and occasionally in a faraway foreign port they might be subject to the wiles of women, too, might they not?

Mr. DAVIS. They might. Human beings have weaknesses, and if they have that weakness let them suffer the results of it.

Senator BARTLETT. But you are not going to let the seamen suffer those results, at least right now.

Mr. DAVIS. Not right now. I am not proposing that we examine it at this hearing, no.

Senator BARTLETT. In your testimony you say that the master be given no lien for proper disbursements even though expended to facilitate the operation of the vessel. Is your objection to a disbursement lien limited to those cases where the master has a pecuniary interest of some type in the ownership of the vessel, or do you object as well in the case where the master is merely a hired worker?

Mr. DAVIS. No, I would object in both instances, Mr. Chairman. The law is perfectly well settled that he who discharges a lien is subrogated to a lien of like standing and like priority.

Our priorities of maritime liens have an excellent logic behind them. We are tearing up that priority when we amend the law to this effect.

For example, if you are a supplier of vessels, which would mean you have an ordinary contract lien, with the provision like this in the law, why would you deal with the officials of the corporation when you get a lien of ordinary contract lien status when you can go to the master and deal with him and get a lien in what we call the halo category, of the seamen's wages and salvage.

Senator BARTLETT. I did quite a little research before preparing the next question.

Does not the English rule on master's liens as set forth in Halsbury's Laws of England provide a master with a lien for disbursements properly made on account of the ship as well as a lien for wages with both liens enjoying the same high priority as a seaman's wage lien?

Mr. DAVIS. That is right, Mr. Chairman. But you should examine into how this happened to come about in England. The context in which it came about is entirely different.

At the time this was created in England, masters were required, by their law and custom, to personally commit themselves to stand behind the obligation of the vessel, for example, supplies, disbursements, and so forth. That has never been the practice in this country and that has never been the law in this country. In this country they are nothing but agents.

So adopting the English law and applying it here, with different principles applicable, is not justifiable.

Mr. BARER. Mr. Davis, is there any such a custom in this country, particularly with reference to masters of fishing vessels, to go into the port to pick up these supplies, ice or such?

Mr. DAVIS. Masters of fishing vessels? Where they are not part owner? No.

The law of agency applies to ships just as it applies to any other thing.

Mr. BARER. Fishing vessels would be within the provisions of this act?

Mr. DAVIS. Yes, they would be. Well, you can say they are. But in reality, even with the 5 percent ownership limitation in here, this effectively eliminates fishing vessels.

Senator BARTLETT. Are you aware, Mr. Davis, of any abuse of the lien for proper disbursements by a master under the English law?

Mr. DAVIS. I am aware of some allegations of shenanigans in some of the English reports. Since the time that I testified on this bill on the House side, I have been to an international conference discussing the subject of maritime liens and I discussed this question with some of the British judges and some of the British lawyers. They did inform me that it is a very common question that they have to deal with, but they can deal with it. Nevertheless it is there.

I don't see any reason why we should agree to the possibility of it being there when it really does not serve a justifiable cause.

Senator BARTLETT. Under English law the master has the duty to make disbursements as necessary?

Mr. DAVIS. At the time this law grew up in England, under English law the master had personally to commit himself to stand behind the debt. Let's say he was ordering fuel oil for the vessel. Not only was the vessel committed to the payment for that fuel oil but the master had to personally commit himself. We have never had that practice here. That was the practice in England.

Mr. BARER. Is that still the practice in England?

Mr. DAVIS. No.

Mr. BARER. They haven't changed the law in England?

Mr. DAVIS. No, they haven't. And I suggest that they will not.

Senator BARTLETT. Actually it will be almost an impossibility for an ordinary master to disburse very much money, would it not? Say he got in a port where he needed some fuel. It isn't likely that he, out of his own pocket, will pay for that fuel.

Mr. DAVIS. It is very, very unlikely that a master is going to disburse very much money. In the first place, buying fuel oil, at least in the record on this bill so far, was talked of in terms of a master bringing the vessel back when she was in a foreign port. Some of our smaller vessels, *C-2* and *Victory*, cost \$3,000 a day to bring back. I don't think masters carry that kind of change around.

Senator BARTLETT. We have talked about seamen and masters. How about the class in between—engineers, and mates. What is their situation?

Mr. DAVIS. They are carried as seamen—members of the crew.

Senator BARTLETT. Did you testify against this bill in the House?

Mr. DAVIS. Yes, I did.

Senator BARTLETT. Notwithstanding, it was approved by the committee and passed by the House.

Mr. DAVIS. Yes, it was.

Senator BARTLETT. Do you know where this bill had its origin?

Mr. DAVIS. If you ask if I know as a matter of fact, no, I don't. But I have a very good idea.

Senator BARTLETT. What if it became law? Are we dealing, in your opinion, with a great amount of money?

Mr. DAVIS. Let me first state that I am supporting giving the master a lien for his wages. But I am not supporting giving this lien for disbursements.

As transactions go today, we are not dealing with a great amount of money. But we are creating a device for gimmickry which I do not think we should create.

Senator BARTLETT. Describe how this gimmickry might work.

Mr. DAVIS. All right. Let's say I am a seller of fuel oil and Mr. Barer comes to me as an official of the company and wants to buy some fuel oil. I say, no, I will not sell to you, but you send your master to me and I will sell him this fuel oil on credit.

Why do I sell to the master and not Mr. Barer? Because if I sell to Mr. Barer, I will have only an ordinary contract lien in respect of priorities. If I sell to the master, I have a halo lien, one that is up there with seamen's wages and salaries.

Senator BARTLETT. One statement you made a minute ago, I suppose you would want to amend because you are not for liens if the master owns any part of the vessel.

Mr. DAVIS. That is right. I think he should take his choice. If he wants the advantages of a lien for his wages, he should not be in the private enterprise ownership of the vessel or corporation.

Senator BARTLETT. What if he becomes master of the ship owned by a new company and this is the only ship possessed by that company and there is no foretelling whether the business is going to be a success or not, and they say, "Captain, we will give you  $x$  dollars a month. We know that this is somewhat less than a captain generally receives, but you know the financial situation. Additionally we will give you  $y$  shares of stock in the company."

He believes this has every possibility of being a success, although he doesn't know, no one knows. And you would rule him out, too?

Mr. DAVIS. I would.

We must not forget that with one exception all maritime liens are secret liens. We are building in another form of secrecy here. We are taking away the value of the preferred ship mortgage. Today it is a lien for masters wages. This we will support. The element with respect to disbursements has the possibility of being a vast dilution of the preferred ship mortgage. The preferred ship mortgages are valuable things in the maritime industry. Tomorrow we are going to have the canal toll people in. They want the lien ahead of the preferred ship mortgage. I can name a number of others that now come after the mortgage. They are going to want to come in ahead of the mortgage.

The preferred ship mortgage is a valuable tool in this industry. Valuable enough that though it didn't exist under the maritime law the Congress created it.

Senator BARTLETT. Do you have any knowledge of the volume of disbursements made by masters now?

Mr. DAVIS. I spent close to 15 years litigating in this field, and to run into one was a rarity, a very big rarity.

Senator BARTLETT. But your opinion is that if this act became law it would no longer be a rarity?

Mr. DAVIS. I am afraid it would not. Furthermore they are protected now by the law of subrogation. Whatever lien they pay off, they have a lien of like standing and like priority.

Senator BARTLETT. If they were given this other lien under the provisions of this act, how would they get the money to make the disbursements?

Mr. DAVIS. I don't know. I don't think masters carry around that kind of money. Money might come about as a device for raising the priority of that contract lien, which is what it would amount to. If it happened to be, for example, for discharging an obligation for seamen's wages, you wouldn't need this because he already has a lien of the highest priority. If it is for discharging a lien for personal injury or tort, that is of the highest priority under the law of subrogation. It is only the contract area where the problem arises.

I do not think that there actually exists very much practice of masters making disbursements on behalf of the vessel.

Furthermore, under the practice, owners supply masters with a certain amount of cash which of course is not the master's; he owns it in a trust capacity to take care of bills which arise in respect of the operation of the vessel.

Senator BARTLETT. If it were the practice for a shipping company to give a master \$5,000 for disbursements at the start of the voyage, isn't likely is it, that they would give him \$100,000 if this becomes law?

Mr. DAVIS. Of course this wouldn't be applicable. No, I don't think it is likely they will give him \$100,000.

I also think really what is meant here is disbursing out of his own pocket, which I don't think he does. He might if the bill is passed.

Senator BARTLETT. You say he has a lien now of the highest priority?

Mr. DAVIS. No, I gave an example of a master discharging a lien for wages by paying a member of the crew. He is subrogated to that man's lien with the same standing and that is of the highest priority. Most courts hold it is the top priority. Some courts hold salvage ahead of it.

Senator BARTLETT. Respecting the master?

Mr. DAVIS. Anyone.

Senator BARTLETT. Then what harm is done by adding to it by the language of this act?

Mr. DAVIS. He already has it. He has it under the law of subrogation. If you add the language of this act, you are providing that a contract lien, which would normally come after the mortgage and would normally come after seamen's wages, and would normally come after salvage, is going to come up there with the seaman's wages and salvage claims simply by reason of the fact they dealt through the masters.

Senator BARTLETT. Yet you think that is all right if he owns no share in the vessel?

Mr. DAVIS. No, I do not. I do not support the disbursement portion of this bill at all.

Senator BARTLETT. I was going to add that. With those exceptions you think it would be all right?

Mr. DAVIS. To give the master a lien for his wages? Yes, I do.

Senator BARTLETT. Mr. Barer?

Mr. BARER. The subrogation arising out of paying off a contract debt would not only be behind seamen's wages, salvage, and preferred mortgage, but also behind any cause of action arising out of a tortious act.

Mr. DAVIS. That is right. Tort outranks contracts in the maritime law.

Mr. BARER. You suggested enactment of this legislation might encourage or lead to some kind of gimmickry in paying off contract debts.

Mr. DAVIS. That is right.

Mr. BARER. If the paying off of the debt was motivated by gimmickry, would it still be a "proper disbursement" within the language of the statute?

Mr. DAVIS. Not unless you can prove it. It is a problem of proof. Why create a problem we don't have? This isn't a problem.

Mr. BARER. Could not the court determine whether the disbursement is really necessary for the operation of the vessel rather than gimmickry, and decide whether it is proper or not?

Mr. DAVIS. It depends on what evidence the attorney on the other side can present. That depends on what evidence you can get hold of. It is a fairly difficult question. This is demonstrated by the English cases I have read where the issue is raised but is never resolved because of the difficulty of getting evidence.

Mr. BARER. Is it a practice, if you know, for any of the large U.S.-flag lines which employ many vessels and many masters to perhaps give a share or two of stock, which is really a very small percentage of the ownership of the corporation, to the master, to encourage his interest in that company and in doing his job? Or is it a common practice, if you know, for a master who has worked for years for a large U.S.-flag company to perhaps purchase a share or two of stock of the company he knows so well?

Mr. DAVIS. I have no knowledge on that, Mr. Barer. I certainly do not want to be on record as against masters becoming stockholders in shipping companies, or even having arrangements under which they can raise their status to an owner instead of just an employee. But I think if they want to be in that class, that it is only fair to other claimants not to give them the preferred status in that respect.

Mr. BARER. That will lead to the situation where if they own one share of stock in a corporation that had assets of millions of dollars, and that corporation should fail, they would lose all their wages.

Mr. DAVIS. That is an extreme example. When you get down to coping with the problem where do you draw the line? The best way to draw the line is if he has ownership in the corporation or has ownership in the vessel, let him forgo his lien. If he doesn't, he gets his lien for his wages. The problems of where you draw the line is very difficult.

Mr. BARER. You think this might be a good case for subsidizing more shipping lines to be sure they don't fail, and avoid that problem?

Mr. DAVIS. No.

Senator BARTLETT. It is a matter of law and technicalities, and I confess a relative degree of ignorance on those subjects, relating only of course to this particular problem. But as I understand this act, if it becomes law, would give a master a preferential status which he does not now enjoy, is that right?

Mr. DAVIS. That is true.

Senator BARTLETT. And you have the fear that this might react adversely against those who now have prior rights existing in law?

Mr. DAVIS. Not with respect to his wages, Mr. Chairman. We are supporting giving the master a lien for his wages at the same priority as the rest of the crew. But we are not supporting the aspect of giving a lien for contract disbursements.

Our position is that that is already covered in our Admiralty Law under the law of subrogation.

With respect to his wages, to go back to that point, we say that if he is part owner of the vessel or an interested owner in the corporation, he should forgo his lien for wages.

Senator BARTLETT. Is it true that if he had the right for a lien, even if he were part owner, and had the right to a lien for disbursements, that actually we would be dealing with comparatively small amounts of money in the aggregate during any year?

Mr. DAVIS. As of the present time, we would be. But under the practice which would probably develop after the enactment of this act I don't believe we would be.

Senator BARTLETT. Why?

Mr. DAVIS. Because if I can deal with the master and raise the status of my contract liens over that of the mortgage, over that of tort liens, all the way up to the position of seamen's wages and salvage claims, that is whom I will deal with. I wouldn't deal with the officials of the corporation.

Senator BARTLETT. You are talking about disbursements?

Mr. DAVIS. I am talking about disbursements.

Senator BARTLETT. How are you going to arrange this so that you can do this?

Mr. DAVIS. How am I going to arrange it?

Senator BARTLETT. Yes.

Mr. DAVIS. I deal only with the masters. I will contract only with the masters.

Senator BARTLETT. You mean if you are in Singapore and you have a fuel agency there, and the master wants to refuel, you will deal directly with him and not with the ship's husband?

Mr. DAVIS. That is right.

Senator BARTLETT. Where is the master going to get the money to pay you?

Mr. DAVIS. Even if he doesn't get the money to pay me, I want him to incur the obligation.

Senator BARTLETT. Yes, but you don't want to wait, I shouldn't think, as a business man, for this vessel to go bankrupt and to have to go through all these long winded procedures.

Mr. DAVIS. If you are talking about instances of paying me at the time, I have no problem because if I am going to be paid in cash I don't care whether the ship's husband pays me or the master pays me.

Senator BARTLETT. Where will he get the cash?

Mr. DAVIS. If I am going on credit, where this would arise, I wouldn't want to deal with the ship's husband. I want to deal with the master, so my lien will have a higher priority, ahead of the seaman's wages, the tort liens, and everything else.

Senator BARTLETT. Where is your money coming from if you don't deal for credit?

Mr. DAVIS. It will come, absent a lawsuit, from the owners of the vessel. If I sue you, I am going to sue under this act that I dealt with the master. This was a proper disbursement made by the master.

Therefore my status is up there at the top. It is only when you have financial problems that it is really going to arise.

Mr. BARER. Mr. Davis, when you refer to the portion of the bill that says the master lien is for liabilities, if he makes himself liable—

Mr. DAVIS. Disbursements means for things he pays out of his pocket. Liabilities means the other man's claim.

Mr. BARER. If he is personally obligated, even though on cash has changed hands, he would have a lien because he was personally bound?

Mr. DAVIS. Yes.

Mr. BARER. Even though he had not actually paid it out of his pocket?

Mr. DAVIS. Yes, sir.

Senator BARTLETT. But if you are a fuel dealer in Singapore, would you want to go through the agonies of a suit in case you had trouble collecting your money?

Mr. DAVIS. Would I want to go through the agonies of a suit?

Senator BARTLETT. Yes.

Mr. DAVIS. I might have to if I want to get paid.

Senator BARTLETT. You might have to. It seems to me that the ordinary business practice would be to continue in the future as in the past and deal through the ship's husband, because you are taking a chance on lawyers, appeals, and what-not.

Mr. DAVIS. Nothing in that lien would be changed by this. The only thing that would be changed is that if I dealt with the master, I would get the status of my contract lien raised up to the limit of a seaman's wage and a salvage claim.

Senator BARTLETT. Agreed. But you might be a long time getting your money.

Mr. DAVIS. I might be a long time getting my money even if I dealt with the ship's husband.

Senator BARTLETT. Not so likely.

Let's take a responsible steamship company. They are not going to give the master unlimited authority to make disbursements, are they, if this lien were to apply?

Mr. DAVIS. You are saying they are going to turn around and restrict the master. This isn't so easily done. In the Law of Admiralty, you have got the element of the *in personam* action and the *in rem* action. In the *in rem* action you don't have to worry about who the owner of that vessel is. You sue the vessel as if it were a person. A vessel can contract, break contracts, commit tort, commit crime, sue or be sued, irrespective of where the owner is. So I don't worry about the owner. I worry about the vessel and the master.

Senator BARTLETT. I think you will worry because I think you are not too big a fuel dealer and you would like your money at the end of every month. And you wouldn't like the prospect of going through all this litigation.

I have no further questions. Thank you very much.

Senator BARTLETT. Captain O'Callaghan, secretary-treasurer, International Organization of Masters, Mates & Pilots. And you are accompanied by Edward Pierson, counsel for International Organization of Masters, Mates & Pilots.

**STATEMENT OF CAPT. THOMAS F. O'CALLAGHAN, SECRETARY-TREASURER, INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS, ACCOMPANIED BY EDWARD PIERSON, COUNSEL**

Captain O'CALLAGHAN. Yes, sir.

Senator BARTLETT. Captain, are you going to testify first?

Captain O'CALLAGHAN. Yes, sir.

Senator BARTLETT. All right. At your pleasure.

Captain O'CALLAGHAN. My name is Capt. Thomas F. O'Callaghan. I am presently secretary-treasurer of the International Organization of Masters, Mates & Pilots. This is an organization composed of licensed deck officers serving on merchant marine vessels of U.S. registry. It is the oldest and largest organization of its kind. I saw active duty as a sea captain for many years followed by service as a port captain. I withdrew from active duty when I was elected secretary of East Coast Local No. 14 of the International Organization of Masters, Mates & Pilots having offices in Baltimore, Md. I am appearing before you today to testify in favor of the pending bill.

As the law stands today, the only member of a ship's crew who does not have a lien for his wages is the master. All other crew members, both licensed and unlicensed, have such lien. In addition to loss of wages, masters have frequently suffered losses of disbursements of their own funds made on behalf of their vessels for vitally needed supplies and other necessary items. I am speaking, of course, of situations where the owner or operator of a vessel of U.S. registry becomes bankrupt. It is in such a situation that the other crew members have liens which protect them, and the master has none. In the course of my own experience both as a sea captain and as an official of the International Organization of Masters, Mates, & Pilots I have observed many instances where masters have lost large sums of money due to this inequity in the law.

The purpose of the pending bill is to correct this situation and to give a master a lien against the vessel for both wages and disbursements of his own funds which he has made for the benefit of the ship.

In concluding my remarks, let me emphasize that we are not seeking a special privilege for masters, we are merely trying to eliminate a harsh and unjust distinction in the admiralty law which has resulted in the loss to them in many instances of their own hard-earned wages and money which they have advanced out of their own funds in good faith.

Thank you.

Senator BARTLETT. Thank you.

And before putting any questions we will hear the statement of Mr. Pierson.

**STATEMENT OF EDWARD PIERSON, COUNSEL FOR INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS**

Mr. PIERSON. Thank you, sir.

As the chairman inquired as to the sponsorship of the bill, the bill was sponsored by the International Organization of Masters, Mates & Pilots. I should say is sponsored. That is the largest organization of licensed deck officers in the United States. Its membership is confined to officers who serve on vessels of American registry.

I prepared the bill at Captain O'Callaghan's request. I might say this: The bill, as it was passed by the House of Representatives, is not in its original form. Several Government departments raised the question of a master having a financial interest. After we conferred with the representatives of these departments, it was agreed that if a master had a financial interest of more than 10 percent, that he should be barred from his lien. If he has less, he is eligible to get his lien. That would take care of those instances where the master has a comparatively slight interest, one or two shares of stock.

I noticed in Mr. Davis' statement the reference is made to 5 percent interest. It is my impression it was 10 percent. I may be wrong about that. But be that as it may, we readily conceded that. We see no objection to it. We think as a practical matter you are going to get very few masters who have any substantial financial interest in a vessel. They might have one or two shares of stock, but they could conceivably under modern methods of financing employment have a stock operation that would give them a relatively small interest. But in all likelihood the amount of stock they own would be insignificant in comparison to the lien for wages. We think the lien for wages is the important thing. And as far as a master sitting on both sides of the fence, certainly if he has less than 10 percent interest that hardly puts him in the employer category.

As one of the members of the subcommittee of the House of Representatives said, if he had a large interest, he hardly would be at the wheel of the vessel. He probably would be sitting behind a desk.

I will go into any prepared statement, if I may. And then if the committee would permit I would like to answer some of the objections that Mr. Davis made.

As Captain O'Callaghan has stated, the master, unlike the other officers and members of the crew of American merchant vessels, does not have a lien against the vessel for his wages nor has he any right to libel the vessel to enforce payment of his wages. This situation has resulted in the loss to various masters of large sums of money in contrast to the payment in full of wages to all other officers and crewmembers—including engineers—in cases where it has been necessary to libel vessels in order to enforce payment of wages, due to financial difficulties of various owners.

This is an unfortunate situation, particularly since the reasons for making a distinction between masters and other members of the crew in their respective rights for unpaid wages are historical in nature and have long since ceased to have any practical purpose or reason for existence.

The admiralty law rule which bars a master's claim for wages was, along with most of our admiralty and common law, borrowed from England. However, the English long ago recognized the inequity inherent in this rule and accordingly granted by statute to masters of English vessels the same lien for his wages as the other seamen. I do not have the exact date of this legislative change in the English law; however, it occurred prior to 1880. So we are about 90 years behind the English in that respect.

The lien granted to English masters has been enforced by U.S. courts in several cases wherein such courts acquired jurisdiction over English vessels. Cases so holding are *The Yarmouth*, 1923 AMC 729 (D.C. SDNY 1923) and *Covert v. British Brig Wexford* 3 F. 577.

I mention this because the courts have found nothing against our public policy in enforcing such a policy or they would not have enforced the English law.

Various reasons have been advanced to support the denial of a lien for wages due the master. It has been said that if the master were allowed such a lien he could libel the vessel whenever he had a dispute with the owners. This is certainly not a valid reason since any other officer or member of the crew engaged in such a dispute could do the same thing so that if this were a proper reason the other officers and members of the crew should likewise be denied a lien.

It has also been suggested that the master can pay himself out of the freight money. Under modern steamship practices the master rarely has occasion to collect freights. In addition to this it was held by the Circuit Court of Appeals for the Fourth Circuit in the case of *Alabama Drydock and Shipbuilding Company v. Foster et al*, 31 F. 2d 394, that the master does not have a lien on the freight money. In this case the court held that even though the reasons which formerly influenced courts in concluding that a master has no maritime lien for his wages may have ceased to exist, the court was powerless to change this rule and indicated very strongly that the only cure was a remedial statute. And that is why we are here today.

The claim of the seaman for his wages has been referred to as a "sacred claim" and in an English case, *The Madonna D'Idra* (1 Dod 37 (1811)) wage claims are referred to in the following terms: ". . . sacred liens, and as long as a plank remains the sailor is entitled, against all other persons, to the proceeds, as security for wages." In this same connection a distinguished writer, Martin J. Norris, in his treatise on the Law of Seamen, volume 1, second edition, section 298, page 336, states: "The wages of seamen have been favored in the law of all nations because of the peculiar and perilous service in which they are earned." Certainly these statements apply with equal force to the master as well as the other officers and members of the crew and, in point of fact, the master has the greater responsibilities but shares the same risks.

I might add that denial of a lien to the master inures to the benefit of other claimants who may have loaned money on the security of the vessel or may have sold supplies or rendered services. Claims of this latter type are commercial and financial in nature and ample provision may be made in the prices charged for such supplies and services and in rates of interest for money loaned so as to protect creditors in these categories for the occasional loss that they may suffer where the owners of the vessel default. The master is not in a position to make such provisions in his dealings with the owners and can only be protected if he is given the same lien that the other members of the crew now have.

Included in the pending bill is a provision giving the master a lien for disbursements made by him of his own funds on behalf of the vessel as well as a lien for his wages. As has already been stated, a master will frequently advance his own funds and in the absence of a lien has found himself unable to recover when the owner or operator gets into financial difficulties resulting in the libelling and sale of the vessel. We suggest that there is no logical reason why the master should be denied a lien for such disbursements. I might add that the amounts which a master may advance under such circumstances are

quite substantial and represent money that the average master can ill afford to lose.

I would like to depart from my prepared statement briefly and say that when I say substantial, they are substantial to the master; they are not substantial in relation to the vessel, to the value of the vessel. In my own experience I don't know of any instances where they have exceeded \$5,000.

The injustice and inequity which masters have suffered in their efforts to enforce their wage claims and claims for disbursements under the present law has been borne out by the experience of our firm and the experience of other attorneys. We practice in Baltimore and we have had case after case in that port where the sale of the vessel produced ample funds to pay the wages of the entire crew but the master has been excluded and has suffered substantial loss because the law denies him a lien. We have that very situation at the present time in the matter of the SS *Jian* wherein the master of that vessel, Harold I. Dumble, has a proper and valid wage claim for \$3,133.27 and a further claim for disbursements made by him on behalf of the vessel in the amount of \$870. Although all other seamen have been paid their wages out of the proceeds of sale of that vessel, nothing has been paid to Captain Dumble out of those proceeds. Claims have been filed on his behalf; however, payment to Captain Dumble is being resisted and it is highly unlikely that we will be able to effect any recovery on his behalf. In the case of the SS *Pacific Carrier*, which vessel was also sold in Baltimore, the master, Capt. Clifford Carlson suffered a substantial loss of approximately \$6,400.

Another case in Baltimore involved the SS *Valiant Explorer*, where the master, Capt. Nicholas E. Mavroleon, suffered a loss of over \$500 for a wage claim incurred prior to the libelling of the vessel and was obliged to settle for 69 percent a claim for wages incurred after the libelling of the vessel, resulting in a further loss of approximately \$1,700. A further case involved the SS *Westhampton*. The master, Capt. William J. Lindros, was fortunate and suffered a smaller loss of \$461.82.

In 1963 Bull Lines, Inc. went out of business. Although the SS *Easthampton* was sold in Bombay, India, due to the fact that the ship is American the American law will be applied. There were two masters involved, Costos and Moore, who will be unable to assert claims of \$5,405.07 and \$4,806.64 respectively.

Also in 1963, the SS *Kathryn* was sold after being libeled in Norfolk, Va. All of the seamen were paid except the master, Walter Link, who suffered a loss of \$1,497.34.

In Philadelphia in 1963 the SS *Start Point* was sold under the jurisdiction of the admiralty court and the master's claim of \$2,757.75 in that proceeding was disallowed.

The SS *Pacific Explorer* was sold in Mobile, Ala., in 1959. The master, William Matrinis, was unable to enforce a claim of \$3,317.87.

Also in 1959 the SS *Pacific Ocean* was sold in Galveston, Tex. All other seamen were paid but the master, John A. Mayer, lost \$3,699.36 in wages.

I might add that in many of the instances which I have cited above, the amount of the claim includes both unpaid wages and disbursements.

The above list is, of course, incomplete, but does illustrate the real loss occasioned to masters by the absence of maritime lien for their wages.

For the reasons which I have set forth in the course of these remarks, I respectfully urge that your Committee approve this bill and recommend its prompt passage.

Senator BARTLETT. Thank you, Mr. Pierson.

Captain, how many members does the International Organization of Masters, Mates, and Pilots have?

Captain O'CALLAGHAN. Approximately 10,000, sir.

Senator BARTLETT. What kind of disbursements does a master make that would be within the lien created by this legislation?

Captain O'CALLAGHAN. The moneys that we are speaking of, Senator, are the actual cash that the master, of his own cash, puts out.

We had occasion where the company went bankrupt and we certainly encouraged the master and all of our officers to bring the ship back to the United States if it is at all possible. This particular master, with his own funds, put out \$5,000 for fuel oil in order to get the ship back to the United States. And that bill was treated exactly the same as the shipyard bill or ship chandler bill. He did not collect it.

In the course of an ordinary voyage there are many times that a master puts out his own money, and he especially in these cases because the agents, the suppliers, the ships chandlers, simply will not deliver goods or do repairs to the ship unless the cash is available. They know the financial status of the company and once the ship leaves they know there is not much of a chance to recover their money and they simply do not service the ship unless the money is right on the line.

In these cases, in order to keep the ship going, the captain does put out his own personal money.

In other cases, a master may put out his personal money in the form of a draw to the crew. This is lost in the case of bankruptcy because there is no one to settle the master's account.

The moneys that we are speaking of, in any company, is ordinarily settled when the master's account is settled, and a percent as master's expenses. The companies, the line companies, and those companies that are not speculators, there is no difficulty whatsoever. Whatever the master puts out, if it is legitimate, there is never a question. I know of very, very few cases where there was a question where the master put out his money and has a receipt, the company settles at the end of the voyage.

Senator BARTLETT. If the supplier in Bordeaux, France, knows that the company is in a shaky financial situation, the captain must likewise have that information. Then why, knowing the risks involved, would he put out his own money?

Captain O'CALLAGHAN. Unfortunately, Senator, most masters have a faith in their vessel and a faith in the company that they work for, and they believe this is just a temporary financial condition, that possibly the next freight money the company will find themselves financially solvent. Such is not the case, but it is the belief of many masters.

Senator BARTLETT. They know they are gambling when they pay that money out, in certain cases.

Captain O'CALLAGHAN. They shouldn't do it, but they do.

Senator BARTLETT. When is the master of a vessel authorized to make disbursements?

Captain O'CALLAGHAN. Ordinarily, in a well run company, the master, except for very minor disbursements, doesn't have the occasion. He signs bills, invoices, that the agent pays for. In a responsible company there is no question about the credit. The master merely lets his agent know that he needs repairs, he needs certain stores for the vessel and it is a routine thing. The master never pays any cash. It is only when the suppliers or repairmen refuse to give the vessel any service that a master must put out his own money. This happens not only in Bordeaux, France, Senator, it happens in Baltimore, Md., and San Francisco.

Senator BARTLETT. That certainly ought to be a warning to the master that he is gambling with fate.

Captain O'CALLAGHAN. Unfortunately we have the masters who have foolish faith and should not actually put out their own money and they hope the venture will continue and that it will be profitable. The only thing they can possibly realize from it is their own wages. In some cases, such as bringing the ship back to the States, it does make a big difference not only to the master but to all of us. That is where we earn our living and we don't want to have a ship left totally unprotected in Egypt or India.

When a company disappears there is nothing quite compared to it. The telephones are shut off, no one acknowledges there ever was such a company, and the master feels that is his ship and tries to protect it. He probably should feel as everyone else and say this is it, we have had it.

Senator BARTLETT. When a master is authorized by the owners to make disbursements, must such disbursements be authorized in some way by the owner of the vessel in order to be proper disbursements so as to be within the lien this legislation would provide?

Captain O'CALLAGHAN. In a well organized company there never is any question. You might say speculators at certain times go into the steamship industry that we are speaking of here. We are not worried about States Marine, United States Lines, Moore-McCormack, Prudential, any legitimate operator. We would not be here if it weren't for the type of people that get into the steamship operation at times, totally irresponsible speculators, not steamship operators.

Senator BARTLETT. Mr. Pierson, would you care to comment on the legal situation arising from that question?

Mr. PIERSON. Yes, sir. I think it is much like the common law situation where a wife can pledge her husband's credit if he doesn't supply her with necessaries. I think in my opinion under this act, whatever items the master paid with his own money, were items necessary for the ship's welfare, then I think it would be a lien. And if the owners hadn't provided it, I don't think he would have a right to buy anything he pleased. I think it would be confined strictly to necessities.

In my testimony before the committee of the House of Representatives I gave some examples. I might say this, I was then replying to Mr. Davis' statement. I said:

In my experience the amount was seldom so large that it would jeopardize the mortgage. He doesn't pay ship's crew members wages over protracted periods of

time. He seldom would pay them. A crew in a foreign port does not have too much choice if they haven't been paid. They stick around to the end of the voyage. And of course they are protected with a lien. So that the disbursements he makes are largely emergency disbursements.

The ship may be in a port where they have no agent. They run short of fuel. They need food. I don't think these things are ever going to exceed a few thousand dollars. They are not going to jeopardize the position of a mortgage holder because even the smallest vessel brings amounts running in the hundreds of dollars. So that if the master has spent three to five thousand dollars, no one is going to be hurt except him if he doesn't have priority.

The three or four thousand dollars that I speak of as being insignificant in relation to the amount of the mortgage is not significant to the master.

You are going to accomplish another thing by leaving the law as it is and not giving him a lien for disbursements. If the master has any sense he is not going to put out his money. He is going to let the vessel sit wherever it is until such time as they get the necessary supplies or until the vessel is libeled. In that situation you are going to have a necessity for the U.S. Government to repatriate the crew members.

When a master spends money for the ship he is not doing it in any way for his own benefit. It is for the benefit of all concerned. Indirectly he is helping the preferred mortgage holder.

I gave you a somewhat longer answer than you wanted.

Senator BARTLETT. Not at all.

Mr. PIERSON. What I am pointing up is he will do it only in situations of necessity. He is not a banker. He is necessarily going to put a small amount of money up. Frankly, he will have a lien where he pledges his credit out of the provisions of this bill, and I can't see many situations where anybody is going to give him credit.

As Captain O'Callaghan said, it is cash on the line.

And it doesn't have to be where the shipowner is in desperate circumstances. They may be in a place where simply the supplier doesn't see fit to give credit.

Captain O'CALLAGHAN. Senator, I would like to point out one place where a master might have to put up money. All of the union contracts call for liberty in port after the vessel has been in port a certain amount of time. In the event liberty is not granted, then the entire crew goes on overtime. It might be a situation where launch service for liberty, if the vessel is at anchor, the master might have to put out \$30 a day and he is there for 10 days. If he doesn't put the \$300 of his own cash it will probably cost the company \$400 a day in overtime, he does it and there is no question.

In the case of a bankrupt here—an owner might during the course of the voyage become bankrupt—the master is out that money.

As far as signing for any bills, if they won't trust the ship they certainly will not trust the master.

Senator BARTLETT. Would a captain who did leave the ship in a foreign port rather than pay for supplies have difficulty getting another command?

Captain O'CALLAGHAN. He would have to go to work for the same type of company he left the port in, where he didn't pay for the supplies. He would have difficulty getting a command in a line company, yes.

Senator BARTLETT. Presently a master is subrogated to the rights of any creditor of the vessel that he should satisfy and therefore the master assumes the lien of the creditor. This lien of the creditor, however, has a lower priority than those for seaman's wages or arising from tortious acts. But does not the law of subrogation assure the master who makes proper disbursements sufficient protection?

Mr. PIERSON. No, sir. It might be for wages, but not for these other items. He would be low down on the totem pole on the other items. I would say, of his emergency disbursements, the least frequent are for wages. He couldn't pay any substantial amount of wages. Mostly they are for contract items where he would have a very low ranging lien.

I might say this, Senator: You give the man a lien, you don't give him a pot of gold. He might be scrambling around for several years to enforce that lien. Particularly if he is subrogated to a contract lien.

We have had a number of cases in Baltimore, and the procedure followed there is that the judge will sign an order allowing payment of wages immediately, assuming that the funds are ample. All the other lienors scramble around. The case is referred to a special master. Some of those cases go on for several years.

Maybe I am going a little bit off the path, but Mr. Davis spoke about the possibility of gimmickry and fraudulence. I can't imagine anything less likely. You have a number of people there. All of these different rival claimants, each one trying to cut the other one down. If there is any element of fraud apart from criminal sanctions, I am sure counsel for the other lienors will dig it out. It is extremely unlikely. There are no nonsense secret liens. They have to be asserted in open court.

As I say you are not giving a man much when you give him a lien. We are not asking for anything extraordinary here. It is really you might say last ditch protection.

As Captain O'Callaghan has pointed out, in most well-run companies this is a problem that seldom arises. In the second-rate companies, the speculators, these people who buy one ship hoping to get rich on one voyage, these problems do arise. We anticipate there will be more in the next few years. At the present time shipping is at a premium.

If the war situation should happily resolve itself, a lot of these people are going to be forced out of business. You are not giving a man a bonanza when you give him a lien. When you subrogate him to a contract lien you are giving him practically nothing.

Senator BARTLETT. Why should disbursements by a master have a greater lien priority than any other debt arising from a contract, or greater than any lien arising from a tort?

Mr. PIERSON. Because they are typically made in emergency situations for the benefit of all concerned, to get the vessel to its home port, possibly to avoid it being libel in a foreign port, avoid the necessity to repatriate crewmen, a burden on the States when the vessel is elsewhere. This is not a matter of daily occurrences. The master makes trivial disbursements for which he is promptly reimbursed. We are dealing here with emergency situations. Certainly the average master is not on a day-to-day basis going to put out large amounts of his own money. He usually doesn't have to.

He puts it out when he has to. He puts it out foolishly. But he does it not for his own benefit but for the benefit of practically everyone interested in the vessel.

I spoke of a vessel being sold in Bombay, India, an American vessel. In all likelihood, had the master been able to make disbursements there, that vessel would have been brought back to the United States.

I can't see where anyone is going to be hurt. The amount that he puts out in relation to the value of the vessel is trivial. He couldn't put out very much money. He hasn't much. It is like everyone else, he makes it and he spends it. It can be made to sound a terrific bugaboo, that he is going to incur liens that will wipe out the value of the vessel. It is quite impossible. Certainly, in all practicality, you are not going to have it happen. You are going to encourage the master possibly to make some disbursements that he wouldn't otherwise make in an emergency situation. Beyond an emergency situation, I can't see where a master would be putting out a great deal of money.

Senator BARTLETT. Assuming this bill should become law, could not a master that enjoyed under a 5-percent ownership—and as a matter of fact that is the figure in the act as it comes from the House—

Mr. PIERSON. I was unaware that the committee had made that change. There is no objection. We don't ask this committee to change it. Five percent suits us, Senator.

Senator BARTLETT. Could not a master who enjoyed less than 5-percent ownership interest in a vessel pay off ship expenses out of his personal funds knowing he would enjoy first-lien rights and then if the ship became a financial failure the master would have his creditors paid off and the seamen would not enjoy any greater right to exercise a lien for their wages than the owner would have to be reimbursed for paying off his contract creditors?

Mr. PIERSON. I would say that theoretically it is possible. In the first place, at worst, all of these creditors, the master with his lien for wages and disbursements, and the other seamen with the lien for their wages, no one would be ahead of the other. In other words, they would share percentage-wise.

Let's assume that the master had run up bills of \$25,000, including his wages, and the seamen had wage claims of \$75,000. You would have total claims of \$100,000 which would have the same rank or status.

If your vessel only brought \$50,000, plucking figures out of the air, it would mean everyone would get 50 cents on the dollar. So if the master did create a situation where he ran up and paid enough bills to exhaust the available money, he would be defeating his own purpose because he couldn't get paid a hundred cents on the dollar. He would not come ahead of the seamen. He would have the same parity or the same priority as they.

Senator BARTLETT. But they would receive less than they otherwise would have.

Mr. PIERSON. Which I think is extremely remote; that is true. It could. But it is extremely unlikely. And the average sailor on the average vessel, the vessel brings far more than enough to pay the seamen's wages. The wages will not be beyond the wages for one voyage. Prices vary with demand and the time for shipping. I don't know of any cases where even an ancient Liberty ship has brought less than \$50,000. And in these times it runs to much higher amounts.

We are getting down to rockbottom now. Take a World War II Liberty ship today. It will bring \$100,000 to \$200,000. I have seen some of them sell for as little as \$50,000 when there was little demand for shipping. But I have seen in no case—and I guess we have been in at least a dozen cases in Baltimore in the last 5 years—where the

proceeds of the vessel weren't far more than needed to pay seamen's wages.

Again you have your situation where you still have fraud and you have courts to enforce laws. Any law that is passed is susceptible of abuse, and that is one of the things that the courts are for. I think in a situation where a master, through some ulterior and improper motive, paid a lot of bills that he shouldn't pay, I think the court could disallow those bills. I think the very word "disbursement" implies disbursements that are necessary to the ship. I don't think he could go out and say, "put these bills to my credit, I will pay you and I will have a lien."

It would presuppose collusion with the creditor.

As I said before, when you get necessary liens asserted, you have a room full of people each one with a knife trying to cut the other fellow's throat. There is nothing secret or haphazard about it. Everybody is in there trying to upset the other fellow's lien so there is more money for him. And the people who represent the mortgage holders and the contract lienors, are the most assiduous in trying to destroy liens and they are the people who consistently opposed us when we have tried to get masters paid.

In actual practice they don't accept this proposition that the master is subrogated. The master is fought every inch of the way.

I say to the committee out of my own experience, there is no need to be apprehensive that this law will furnish a basis for fraud. The whole proceeding is too highly of an adversary nature, it is too open, it is too protracted for anybody to get away with anything.

And you have to presuppose the supplier who is going to not only want to be a party to a fraud but as you yourself suggested, when you were questioning Mr. Davis, he has to put himself in the position where he is going to furnish services or supplies that cost him money and gamble on getting it back from a long-drawn legal proceeding where he will have to pay lawyers fees. Businessmen don't function that way or they don't stay in business very long.

Senator BARTLETT. Do you, Mr. Pierson, or you and Captain O'Callaghan, both, desire to comment on certain statements made by Mr. Davis?

Mr. PIERSON. Yes, sir; if I may.

In the first place Mr. Davis said he did not oppose—to some extent I have commented on it already but one thing I didn't mention—he said he did not oppose giving the master the same lien as other seamen.

I notice in his statement he says "They propose an amendment"—his Administration—"which would grant a master a lien only for wages earned after the discharge of the mortgage." If you do that you might as well not give a master a lien because consistently there is not enough funds to pay these mortgages. So you would, No. 1, not give him the same lien as other seamen because their liens come ahead.

I don't know if I misunderstood Mr. Davis or not. If he means what he said, that he does not oppose the master having the same lien as other seamen, then it should be a clear-cut lien. It should not be postponed to the payment of a mortgage. If you give him that you give him nothing at all and you might as well not pass the law.

Senator BARTLETT. I think that is a very important point. I am glad you noticed that.

Mr. PIERSON. It is of the utmost importance. All we have done here would be wasted if you subordinated the master's lien to the mortgage. Again in my experience the ships don't bring enough to pay the mortgage.

Captain O'CALLAGHAN. Senator, I would like to state that I personally am acquainted with hundreds of ships' masters and I represent 90 percent of the masters under the American flag. I do not know of one master who has any investment in his ship whatsoever, as far as stock or money goes.

Mr. BARER. Mr. Pierson, I might point out, as I read Mr. Davis' statement, the limitation you just discussed as to putting master's liens subsequent in priority to preferred mortgages, would apply only in those cases where there is at the time of enactment of this proposed legislation, an existing preferred mortgage—apparently the theory being that that mortgage was entered into without notice of this subsequent legislation.

Mr. PIERSON. It would have the same destructive effect, as I understand the present law. Other seamen, unlicensed crew members, mates, engineers, have a lien which comes prior to the preferred mortgage. So he would be putting the master in a different category.

Mr. BARER. At the time the existing mortgages were negotiated, that lien was not within existing law, and thus the mortgagor or mortgagee cannot be presumed to be aware of the prior lien.

Mr. PIERSON. When this law is passed they will be aware that the master has a prior lien.

Mr. BARER. What benefit would that be to the mortgagor or mortgagee who have already negotiated the mortgage?

Mr. PIERSON. Are you speaking of mortgages in effect at the time the law is passed?

Mr. BARER. Yes. That is the only limitation as I understand Mr. Davis' remarks.

Mr. PIERSON. I don't read it that way. He said, "Our proposed amendment would grant such a master a lien only for wages earned"—oh, no—"as applied to vessels on which there is a preferred mortgage at the time of the enactment of the act." I think it is a minor point. I misread it. I apologize for it. I don't think it is going to affect things. The lien of the master is very small in comparison to the value of the vessel. Any time you start putting exceptions into a law you are just breeding trouble.

It is true that they negotiated their mortgage on the basis of this law. But most of these are subsidy situations. And it is not like you are saying that you are enlarging a prior lien because the lien of the seaman that comes ahead of the existing mortgage, and presumably the mortgage was made with an awareness of that situation, is a lien for an indeterminate amount. No one can tell at the time the mortgage is made whether the seamen's claims for wages will amount to \$10,000 or \$50,000. So they necessarily are gambling in that respect. And if you are enhancing their gambling a little bit I don't think you are doing them any great harm. Conceivably there could be an exception in the law, but I doubt very much that it is really going to make any substantial difference.

As a matter of fact, the court might very well hold that it couldn't affect the prior lien on the very logic that you have set forth in your statement.

I doubt very much that there is any necessity for an amendment here. I think also that it is a little unfair to the master to subordinate him to a long-term mortgage. What is the master's situation if he is master of a vessel where there is a mortgage? He has no protection.

Mr. BARER. In your statement, at pages 5 and 6, you recite numerous examples of masters who have had considerable wage claims that they have been unable to collect. Do you know if in any of those instances—I note some, particularly the 1963 Bull Lines matter involving two masters, the amounts were, one over \$5,000 and the other nearly \$5,000—do you know whether any of those masters, either of those two, had any financial interest in the vessels?

Mr. PIERSON. No; I really don't. I would doubt that they did. The Bull Lines was a rather large organization. Possibly Captain O'Callaghan would know.

Captain O'CALLAGHAN. I knew those masters personally and I am sure they had no financial interest in the company.

Senator BARTLETT. Did the Bull Lines, in case you know, have enough money left over after its dissolution, to have paid these masters?

Mr. PIERSON. I don't know it as a fact. I can only say from all of our experience with all other vessels, since the seamen have the first lien, it is virtually impossible for there not to be enough money to pay the masters' wages in addition to the wages of the other seamen because you are dealing with one voyage, sir. This cannot be an accumulation of several voyages.

Senator BARTLETT. Why, if you know, were masters originally excluded from the right to exercise liens?

Mr. PIERSON. Purely historical. It was in the day when shipping was on a different basis. Not that frequently the master was the owner.

There is no logical reason, as I said in my statement. The people from time to time who are opposed to giving a master lien have suggested giving reasons which certainly are not substantial. The one I gave was that the master could libel a vessel when he had a dispute with the owners. As I pointed out, this is something that any crew member could do. He doesn't handle the freight money, so he can't pay himself out of that. And the courts have held that the master doesn't have a lien for freight. I think it is just one of these things that the industry has changed but the law has not. We are simply 90 years behind England in that respect. It is one of these unfortunate things that everybody talks about and nobody does anything about. The courts have suggested that remedial legislation would be in order. An individual master loses money and is unhappy about it and that is the end of it, and he curses out his owner. He himself is going to do nothing about it. That is why Captain O'Callaghan is primarily responsible for the bill because he, by nature of his job, is an escort of a clearinghouse. He is not one master who lost his money. He comes in contact with masters by the dozen. We finally concluded that something should be done about it.

No one who has appeared either before your committee or the House of Representatives committee, no government department, has opposed the bill in principle. I think that is a little unusual and indicates rather clearly that it is a needed change in the law.

But I am disturbed by the suggestion that the master should only have a lien after the payment of existing mortgages because I think those tend to be long-term mortgages and I think it would defeat the purpose of the bill if you put that exception in there. This might go on for years. A master might be sailing on vessels which have mortgages that were in existence at the time this law was enacted. I think you should leave that to the courts.

Senator BARTLETT. Thank you, gentlemen. I have no further questions.

Captain O'CALLAGHAN. Thank you.

Mr. PIERSON. Thank you, Mr. Chairman.

Senator BARTLETT. The committee will be in recess, subject to the call of the Chair.

(Whereupon, at 11:43 a.m., the subcommittee was adjourned.)



