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Tips and traps when contracting with facilities for repair, conversion and upgrades

Complex questions can arise about who has control, responsibility and authority over a vessel when in the custody of a drydock facility. Lack of clarity over contractual and insurance risk allocation issues can be complicating factors when damage occurs while a vessel is at a repair yard or in dry dock. Who is responsible or liable for the damage occurring to the vessel or repair facility, and the resulting repair costs? Is it the vessel's owners or the yard?

Introduction

Preparation for retrofitting scrubbers or new fuels, as well as experiences with Covid outbreaks mean risk allocation and loss of time need be addressed at an earlier planning stage. In some cases, owners have not even been aware that the yard has limited its liability in the contract and some LNG repair facilities also require an owner to waive its rights of limitation.

The purpose of this article is to address the importance of clearly allocating responsibility and liability in the contract with the yard/dry dock for any damage caused during the docking operation. This aspect will be increasingly important for safe working practices necessary with the development of new marine fuels. This Insight also highlights the importance of ensuring that both parties have a common understanding of what needs be agreed in the contract.

A Gard case study

In a Gard case, a vessel was scheduled for dry docking to perform a substantial overhaul, refit and conversion works. During the initial dock inspection of the vessel's flat bottom, it was discovered that large parts of the duct keel plating had been dented and deformed over almost its entire length. It was later established that the overload of the vessel's keel structure was caused by a combination of:

- a) the owners submitting an outdated docking plan; and
- b) the yard, when unable to use the available docking plan, repositioned the keel blocks without performing additional calculations or conferring with the owners.

The result was extensive repair costs, delays and disputes between the owners and yard as to who was liable. Proper planning of the docking process and a clear and concise contract between the owners and yard are important to help avoid such disputes and will protect owners' interests when liability is an issue. Indeed, had the blocks collapsed and the vessel shifted causing damage to the drydock, would this potential liability impact owners' H&M or P&I insurers?

Planning and preparations to be undertaken prior to docking

Much of the dispute in the case study described above could have been avoided with good planning and preparations focusing on the critical steps and tasks in the docking process.

- All necessary documentation required to complete the docking operation and the expected workload at the repair yard, including an updated docking plan, should be forwarded by owners to the yard well before the work is due to commence. A proper and detailed repair specification made available to the yard in advance will save both time and money.
- Docking blocks should be arranged in accordance with the latest/approved docking plan and the yard's responsibility for checking the correct positioning of the docking blocks should be clearly stated in the formal contract.
- Meetings between the owners' representative and the yard/docking master should be held prior to the vessel entering the dock. Prior to the meeting, the owners of the vessel should carry out a proper risk assessment based on the scheduled scope of work in order to identify critical steps and tasks in the docking process. During the meeting, measures to control the process should be defined and agreed and the documentation can be discussed, and any uncertainties clarified.
- Clear communication lines between the yard and the owners' representative should be agreed in the contract at a corresponding level of authority. Normally, the docking master at the yard and owners' superintendent for the vessel represent their respective principals. The main correspondence during the vessel's stay at the yard should be through these persons and any deviations from this procedure should be agreed and documented, especially in contracts containing 'No Oral Modification' terms.
- Owners and yards normally base their work and requirements on their own general terms and conditions. However, such terms do not necessarily correspond with each other and can also vary

substantially from one yard to another. Disputes commonly arise because owners and yards believe their own terms and conditions apply and not those of the other party. It is therefore prudent for vessel owners to review the terms and conditions of the yard to identify potential areas of dispute prior to commencement of any work and it may be necessary to negotiate some of them, such as the limitation liability amount and delayed delivery penalty clause. BIMCO has produced a recommended industry standard Repaircon form.

Use of sub-contractors

There is a trend to use external subcontractors during work at a yard, both by the yard and vessel owners. If the contractual relationships between the yard, subcontractor and owners are unclear, this may lead to very complex liability issues in the event of any damage caused by the yard or one of the subcontractors. Was the subcontractor performing work for the dry dock or owners?

For subcontractors engaged by owners directly, it is important to ensure that they are thoroughly briefed on owners' standards (safety and other), on the content of the detailed repair specification and on the agreed contractual terms and conditions. When it comes to subcontractors engaged directly by the yard, they should be the responsibility of the yard, so the owners' main contract with the yard/repairer will govern the matter if a dispute should arise.

Work at the yard in many cases will be carried out by a combination of the yard's personnel (including their subcontractors) and owner's directly engaged subcontractors. It is therefore important to have a good understanding of the various applicable contractual liabilities between the parties involved prior to the commencement of any work.

Summary and recommendation

In summary, before and after a repair yard has been selected:

- Proper planning and preparations focusing on the critical steps and tasks in the docking process is important to avoid damage occurring and claims arising.
- To avoid disputes if damage occurs, it should be ensured that everyone has a clear understanding of all the agreed contractual terms and conditions between the owners and the yard. Owners should be prepared to negotiate contractual terms and conditions in order to achieve more favourable division of

liability and compensation provisions. Where owners must accept the yard's terms limiting the yard's liability for damage to the vessel or waiver of recourse, owners should consult with their insurers to make sure the terms are acceptable, and cover remains in place.

- Where sub-contractors are used by owners, responsibilities between subcontractor and owners should be clarified between the parties.

Additional recommendations:

- Use of additional owners' personnel to follow-up during the yard stay should be considered as a preventive measure in order to avoid unforeseen damage, extra repair costs and delays. For repairs that fall within the Hull and Machinery policy, attendance fees and costs for superintendents or other owners' representatives may be covered depending on the terms of the policy. It is a good idea to check beforehand with your Hull and Machinery underwriter the terms of cover for such costs.
- Final testing and commissioning after completed repair work by the yard/subcontractor is often supervised or even performed by owners' representatives. An important issue for owners to be aware of in this context is the potential transfer of liability for damages occurring during and/or after testing and commissioning.

Source of Information: The Gard P&I Club