

## Dry docking - responsibilities and contractual issues

### Introduction

Gard has seen that questions relating to responsibility, authority and contractual issues can be complicating factors when damage occurs whilst a vessel is at a repair yard or in dry dock. The questions are mostly related to who is responsible for the damage occurring and the resulting repair costs. Is it the vessel's owners or the yard? In some cases, owners have not even been aware that the yard has limited its liability in the contract.



The purpose of this circular is to address the importance of clearly allocating responsibility in the contract with the yard/dry dock for any damage caused during the docking operation. The circular also highlights the importance of ensuring that both parties have a common understanding of what was agreed in the contract.

### Gard's experience

In a recent 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established that the overload of the vessel's keel structure was caused by a combination of a) the owners submitting an outdated docking plan; and b) the yard, when unable to use the available docking plan, repositioned the keel blocks without performing additional calculations or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 arising, and will protect owners' interests when liability is an issue.

### Planning and preparations to be undertaken prior to docking

Much of the dispute related to the case 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 could 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 repair manager at the yard and superintendent of the vessel represent the parties. The main correspondence during the vessel's stay at the yard should be through these parties and any deviations from this procedure should be agreed and documented.

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- Owners and yards respectively normally base their work and requirements on general terms and conditions. However, they do not necessarily correspond with each other and can vary substantially from one yard to another. Disputes commonly arise because owners and yards believe their terms and conditions apply and not the other party's. 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.

### Use of sub-contractors

There is an increasing 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.

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 damages occur, 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 subcontractors 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. Extra costs for superintendants or other owners' representatives may be covered by insurers depending on the terms of the policy.
- 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.

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