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BRIDGE LOOK-OUT

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WARRANTY OF WORKMANLIKE PERFORMANCE
IN SHIP REPAIR CONTRACTS

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Scheduled shipyard works or ship repairs due to incidents are often challenging times for Shipowners. On the one hand, these procedures are necessary to maintain, or regain, the vessel's seaworthiness and to continue operating. On the other hand, there is the looming risk of improper works being carried out by repair companies, which may lead to physical or financial damage.

A frequent problem relating to dealings between Shipowners and vessel repair companies, concerns the working standard at which the latter is subject to when servicing the former's ship. Repairers must be susceptible to obligations and penalties connected to their work to avoid Shipowners, Charterers or their Insurers bearing the costs of such third party's wrongdoing. In this regard, a principle called the warranty of workmanlike performance ("WWLP") is useful to hold ship repairers accountable for any direct or consequential damages arising from their actions.

It is an expectation posed on the service providers that they will act within an acceptable requirement even when the said standard may not necessarily be expressly agreed. Contracts with ship repairers would include, then, an implied WWLP unless specifically excluded by agreement.

This would ensure that Shipowners would be able to recover damages from the repairing company whenever a specific work was (i) not performed in a workmanlike manner e.g., with reasonable care, skill and diligence and (ii) that damages were suffered as a result of said works.

For instance, a Shipowner could have neglected or omitted its inclusion in a services agreement with a vessel repair provider and could still seek protection and compensation due to the jurisprudential construct that recognises and applies the said concept. It is a useful principle for verbal contracts as well. Due to the familiarity of the relationship between parties, Shipowners could occasionally enter into solely verbal agreements with a long-standing ship repair provider and nevertheless be protected and entitled to compensation through the application of the WWLP when faced with a breach as the principle would be implied in this type of marine arrangement.

Of course, it would be best to expressly include the said clause in agreements with ship repairers, although acceptance of the same from their end could be difficult. A standard clause wording could look as follows:

Warranty of Workmanlike Performance. Vessel repairer represents, warrants, and covenants that it will perform the repair services mentioned in Section [], in a professional and workmanlike manner, consistent with professional standards of practice in the shipping industry and shall, therefore, be liable for any damages arising from or in connection with the services rendered.

However, and as mentioned, there could be some reluctance from vendors to enter a contract which included such a clause. In said situations, the WWLP could still be applied through its aforementioned implied nature and case law construction.

Moreover, the WWLP is encompassed by a strict liability regime which makes it even more favourable to recoup for the damaged party. In this regard, Shipowners would not be obliged to prove fault (either intent or negligence) to merit compensation. The strict liability regime linked to WWLP would only require for an action or omission perpetrated by the service provider that, in turn, generated damages to the subject vessel. Furthermore, there would be no limit regarding the liability extent, so long as a causal chain of events could be established.



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Service providers would then be liable for breach of their WWLP for losses related to foreseeable property damage, costs and expenses. This could even be extended to economic losses in the event of being unable to use the vessel. Such extensions were recognised under the case *Todd Shipyards Corp. v. Turbine Service, Inc. (US)* as per the below facts and case description.

After having its turbine repaired at a shipyard the M/V KATRIN traded commercially in the following months, experiencing excessive temperature in the turbine's condenser top. After passing the Irish coast at Cork, the turbines suddenly seized and stopped. The vessel began drifting towards the coast and the danger was such that the master ordered the chief engineer to try to operate the turbines, no matter what their condition, to save the ship and crew. The chief engineer started the turbines and operated them long enough

to bring the vessel away from the coast and subsequently into the Cork harbour. The damage to the turbines due to this casualty was so extensive that the vessel was sold for scrap. Owners initiated judicial proceedings against turbine's repairers to obtain recovery of the damages sustained. In said judgment it was affirmed that "owners are entitled to have the [part] in the condition contracted for, and to recover as well for loss of use of the vessel, out-of-pocket expenses, and costs and attorneys' fees since defendants breached warranties of workmanlike performance."

To conclude, we would like to inform our clients that we would be more than able to assist you in recouping such losses against liable third parties, including but not limited to ship repair companies, through our recovery experts sitting at Corvus Shipping and Marine Services GmbH ("Corvus"). We possess a team of 25 claims handlers and recovery

agents qualified to assist you in recovery any loss from responsible parties. Corvus is fully certified as a recovery agency at the court of Hamburg, who provide us with the necessary legal standing to act on this market.

With a practical and hands-on approach, focused on amicable resolutions we work to recover sums associated to said losses in a speedy manner. Our clients benefit from a transparent fee structure based on a reasonable "No cure – no pay" percentage calculated solely out of the recovery amount, without any other costs for the claimant. Corvus specializes not only in recovery actions but also provide service for claims adjustments and security facilities.

For more information, please feel free to contact your designated claims handler at Georg Duncker.



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