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Manpower Report:
raising concerns over
shorter sea service



Drydocking

Avoid getting beached by the owner



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When it comes to drydocking costs, an impecunious principal can often leave the ship manager beached. This may involve the manager facing liabilities to the yard but, more often, the allegations will be from the owner alleging that the costs were unnecessarily high due to some alleged failing of the manager.

It is important to get the identity of the principal correct. In one claim a ship manager was appointed as technical manager of a tanker owned by a KG limited partnership. The management agreement was originally between the ship manager and the shipowning company but was subsequently replaced by an agreement with the bareboat charterers, another KG limited partnership. The manager placed an order for various repairs with a shipyard, but erroneously did so in the name of the ship owning company.

The total repair cost was \$4.5 million, of which \$1.3m was paid (by the bareboat charterers) before the ship left the repair yard. When the next instalment of \$1 m was not made, the yard, believing it had contracted with the owner, arrested the ship to obtain security.

The owners defended the claim on the grounds that the manager did not have authority to contract on their behalf. The bareboat charterers went into bankruptcy and the ship manager was faced with claims from the yard for the balance of the repair bill (\$3.2m). The ship owners also claimed against the managers for the costs they had incurred on the basis that the managers had negligently warranted that they had authority to order repairs on the owners' behalf.

Lawyers confirmed that the repair yard was entitled to look to the ship manager for payment. There was no doubt that the

repairs to the ship had benefited the owners and so the ship manager eventually contributed only \$300,000 to the settlement.

This is one example of what can go wrong in a drydocking. Traditionally, ship managers would contract for repairs or a drydocking inspection in their own name (rather than in the name of the ship owner) at the request of the yard who wanted the manager to be the 'hostage to fortune' in the event the owner did not pay some or all of the bill. This happens rarely now, and ITIC, on its website (www.itic-insure.com/knowledge-zone/article/signing-off-on-purchase-orders-as-agents-only-ref-0208-2956) provides advice on how to protect the manager when a purchase order is sent out for goods and services for the ship.

Sometimes, the yard will require a guarantee from a third party such as the owner's parent company. The guarantee is a separate contract between the yard and the guarantor and the manager needs to make sure that it has authority from the guarantor and not just the owning company.

The one thing a manager can guarantee if the relationship with the owner is deteriorating (usually but not exclusively due to shortage of funds) is a claim for negligence if the cost of a drydocking goes well over what was budgeted. This appears to happen with newer ships that, perhaps, were built in a hurry by relatively inexperienced yards in the Far East from 2005 onwards. Avoid undue optimism about the potential cost of the drydocking as kind words really do not 'butter any parsnips' when a much larger bill manifests itself.

Whatever the tonnage, the cycle of a shortage of funds leading to reduced or delayed maintenance and ultimately more costs and time being incurred dealing with a breakdown is often the background to claims handled by ITIC. The managers will frequently face claims alleging that the breakdown was due to poor management and that the emergency repairs had to be performed at greater expense (or more expensive yards) than should have been the case.

Protecting yourself against this type of claim involves consistency of approach to the management of the ship (so avoid using too many different superintendents as that is where problems will arise), careful record-keeping and clear communication with the owner if problems are arising due to funding shortages. ●